(25,058)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1915.

No. 775.

LUCINDA BURTON, PLAINTIFF IN ERROR,

vs.

THE NEW YORK CENTRAL & HUDSON RIVER RAILROAD COMPANY.

IN ERROR TO THE SUPREME COURT OF THE STATE OF NEW YORK.

INDEX.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., MARCH 22, 1916.

a Court of Appeals, State of New York.

LUCINDA BURTON, Plaintiff-Appellant,
against
NEW YORK CENTRAL AND HUDSON RIVER RAILROAD COMPANY, Defendant-Respondent.

Appeal from Judgment Entered Upon Order Denying Exceptions to be Heard in the First Instance.

William F. Connell, Attorney for Plaintiff-Appellant, 16 Court Street, Brooklyn, N. Y.
Alex. S. Lyman, Attorney for Defendant-Respondent, Grand Central Terminal, New York City.

1 Supreme Court, Kings County.

LUCINDA BURTON, Plaintiff,
against
THE NEW YORK CENTRAL AND HUDSON RIVER RAILROAD COMPANY, Defendant.

Statement.

This is an appeal from a judgment entered upon an order of the Appellate Division, 2nd Judicial Department, denying appellant's exceptions ordered in the first instance to be heard by said Appellate Division upon appellant's motions made at the trial to go to the jury upon the issues and also for a new trial, the complaint having been dismissed and the exceptions directed to be heard in the first instance in the Appellate Division.

This action was commenced on the 24th day of September, 1908, by the service of the summons and complaint on the defendant.

Issue was joined by the service of defendant's answer on the 4th day of November, 1908.

There has been no change of parties or attorneys since the commencement of this action.

The above case was tried, together with the case of Heeren vs. New York Central and Hudson River Railroad Company, under stipulation that the same testimony be applied to both cases.

2 *Order Allowing Exceptions to be Heard in the First Instance—Action, Lucinda Burton.*

At a Trial Term of the Supreme Court Held in and for the County of Kings, at the Court House, in the Borough of Brooklyn, on the 2nd Day of March, 1911.

Present: Hon. Isaac M. Kapper, Justice.

LUCINDA BURTON, Plaintiff,
against
NEW YORK CENTRAL AND HUDSON RIVER RAILROAD COMPANY,
Defendant.

The issues in the above entitled action having been duly brought on for trial before this Court, and a jury, on the 27th and 28th days of February, 1911, and the said issues having been duly tried and the counsel for the plaintiff having made a motion that he be permitted to go to the jury upon the issues in this action, and upon all the evidence and the minutes of the trial justice, and the same having been denied, and said counsel also having made a motion for a new trial upon the minutes of the trial justice, and upon all the grounds set forth in Section 999 of the Code of Civil Procedure, and the said motion having been denied, and counsel for the defendant having moved to dismiss the complaint,

Now, after hearing Mr. Alexander S. Lyman, attorney for the defendant, in favor of said motion, and William F. Connell, attorney for the plaintiff, in opposition thereto, and due deliberation having been had thereon, and on motion of Alexander S. Lyman, attorney for the defendant,

3 Ordered, that the complaint of the plaintiff herein be and the same hereby is dismissed, and judgment for the defendant directed accordingly, and it is further

Ordered, that the exceptions taken herein be heard by the Appellate Division of the Supreme Court, 2nd Judicial Department, in the first instance, and that judgment be suspended in the meantime.

Enter,

I. M. K.
Justice Supreme Court.

Granted March 2, 1911.
HENRY P. MOLLOY, *Clerk.*

O. K.,
F. S.

Summons.

Supreme Court, Kings County.

LUCINDA BURTON, Plaintiff,
against
NEW YORK CENTRAL AND HUDSON RIVER RAILROAD COMPANY,
Defendant.

To the above named Defendant:

You are hereby summoned to answer the complaint in this action, and to serve a copy of your answer on the plaintiff's attorney
4 within twenty days after the service of this summons, exclusive of the day of service; and in case of your failure to appear, or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated September 21, 1908.

WILLIAM F. CONNELL,
Plaintiff's Attorney.

Office and Post Office Address, No. 16 Court Street, Borough of Brooklyn, City of New York.

O. K.,
T. S.

Complaint—Action, Lucinda Burton.

Supreme Court, Kings County.

LUCINDA BURTON, Plaintiff,
against
NEW YORK CENTRAL AND HUDSON RIVER RAILROAD COMPANY,
Defendant.

The complaint of the above named plaintiff respectfully shows to this Court as follows:

First. That the above named defendant was at the times hereinafter mentioned and still is, a domestic railroad corporation, and engaged in the business of running and operating railroad cars and carrying passengers for hire.

5 Second. That on or about the 9th day of May, 1908, the plaintiff was a passenger upon one of the cars run and operated by defendant en route to New York City, and duly paid her fare as such passenger, and thereupon became entitled to ride thereon without molestation, assault or eviction therefrom and it thereupon became the duty of said defendant to protect the plaintiff from and against the assaults, acts or violence and insults of its employees, other passengers and strangers while upon said car, and to carry the plaintiff in safety to her destination and to guard and protect her

person, privacy and liberty from assaults, acts, violence or insult, while she was a passenger upon the said car.

Third. That on or about said 9th day of May, 1908, and while said plaintiff was a passenger upon said defendant's car as aforesaid, and while asleep in a berth or sleeping compartment, in said car as aforesaid, the defendant, notwithstanding its duty as aforesaid, permitted, aided and assisted persons to intrude upon plaintiff's privacy, to invade her sleeping berth, assault the plaintiff and violently eject her therefrom and from said car, and compel her to go to a building and there be confined for upwards of 15 hours, without any legal right or authority on the part of said defendant, or said person so to do, and against the will of the plaintiff, and that while said plaintiff was in the custody of said persons and said defendant on a car of said defendant, she suffered insult and indignity at the hands of said defendant, by reason of being referred to as a murderess by said defendant.

Fourth. That said defendant failed and neglected in its duties as aforesaid, and failed and neglected to protect the plaintiff
6 from said assault, violence, ejection, arrest and detention and insult as aforesaid, whereby the plaintiff endured mental suffering, humiliation, wounded pride and disgrace, was made sick and sore, suffered severe nervous shock to her system and was obliged to and did employ a physician and expend money for medicines and medical treatment, and was rendered, and still is unable to attend to her usual and ordinary occupation and necessary affairs on account thereof, all to her damage in the sum of Thirty Thousand Dollars.

Fifth. That the arrest, ejectment and removal of the plaintiff from defendant's cars as aforesaid, was in violation of the Constitution of the United States.

Wherefore, said plaintiff demands judgment against said defendant for the sum of Thirty Thousand Dollars, together with the costs of this action.

WILLIAM F. CONNELL,
Attorney for Plaintiff.

Office and Post Office Address, 16 Court Street, Borough of Brooklyn, City of New York.

(Verification.)

O. K.
T. S.

7 *Answer—Action, Lucinda Burton.*

Supreme Court, Kings County.

LUCINDA BURTON, Plaintiff,
against
THE NEW YORK CENTAL & HUDSON RIVER RAILROAD COMPANY,
Defendant.

The defendant, answering the complaint of the plaintiff in the above entitled action:

1. Admits the allegations of the complaint contained in the paragraph or subdivision thereof numbered "First."

2. Admits that on the 9th day of May, 1908, plaintiff was a passenger upon one of the defendant's trains en route to New York City.

3. Denies the allegations of the complaint contained in the paragraph or subdivision thereof numbered "Fifth."

4. Upon information and belief, denies the allegations of the complaint, and each and every of them, not hereinbefore controverted or admitted.

Second.

For a second, separate and distinct defense to the alleged cause of action in the complaint set forth, the defendant further avers
8 and alleges that on the 9th day of May, 1908, two Peace Officers of the City of Syracuse, N. Y., boarded said train of defendant upon which plaintiff was a passenger, at Syracuse, N. Y., in search of a person who had committed a felony, and having had reasonable cause for believing a person who was accompanied by plaintiff to have been the person who committed said felony, placed the person who was accompanied by plaintiff under arrest and removed her from said train upon its arrival at defendant's station in the City of Utica, N. Y., and that plaintiff insisted upon remaining with and accompanying the said person arrested by said Peace Officers, and did so remain with and accompany her without connivance, inducement or compulsion by or upon the part of this defendant, its agents or servants, or by or upon the part of said Peace Officers.

Wherefore, the defendant demands that the complaint be dismissed, with costs.

ALEXANDER S. LYMAN,
Attorney for Defendant.

Office and Post Office Address, Room 417, Grand Central Station, New York City.

(Verification.)

O. K.
T. S.

9 *Order Denying Motion for New Trial—Action, Lucinda Burton.*

At a Trial Term of the Supreme Court Held in and for the County of Kings, at the Court House, in the Borough of Brooklyn, on the 2nd day of March, 1911.

Present: Hon. Isaac M. Kapper, Justice.

LUCINDA BURTON, Plaintiff,
against
NEW YORK CENTRAL AND HUDSON RIVER RAILROAD COMPANY,
Defendant.

This action having come on for trial before Mr. Justice Kapper, and a jury, on the 27th and 28th days of February, 1911, and the Court having dismissed the plaintiff's complaint, and directed judgment for the defendant, and the plaintiff's attorney having thereupon moved the Court upon his minutes, and upon all the grounds set forth in Section 999 of the Code of Civil Procedure, to grant a new trial upon the exceptions, and because said dismissal is contrary to law and contrary to the evidence.

Ordered, that the said motions be and the same hereby are denied.

Enter,

I. M. K.,
Justice Supreme Court.

Granted, March 11, 1911.
HENRY P. MOLLOY,
Clerk.

O. K.
T. S.

10 *Testimony.*

Supreme Court, Kings County.

LUCINDA BURTON, Plaintiff,
vs.
THE NEW YORK CENTAL & HUDSON RIVER RAILROAD COMPANY,
Defendant.

Before Hon. Isaac M. Kapper, J., and a Jury.

BROOKLYN, N. Y., February 27, 1911.

Appearances:

William F. Connell, Esq., for plaintiff.
Robert A. Kutschbock, Esq., for defendant.

It is stipulated that the two cases be tried together, the same testimony to be applied to both.

Counsel for the respective parties open case.

CORA B. HEEREN, one of the plaintiffs, being duly sworn, testified as follows:

Direct examination by Mr. Connell:

I reside now at 104 West 61st Street, New York. I recall the 8th of May, 1908. On that day I left Franklin, Pennsylvania.
11 I bought a ticket at the station there for New York City. My mother was with me. Over the New York Central Railroad, the defendant in this suit. I boarded the train at Franklin, Pennsylvania. I rode on that car to Ashtabula, Ohio. My mother was with me. When I arrived at Ashtabula I changed cars there, and I wasn't able to secure a sleeper, but I went into the pullman car, and as soon as the conductor came to me, I asked him for a berth, a lower berth. He told me he couldn't give me one until we got to Erie, but he would fix me up as soon as he could, which he did, and he assigned me to Section 1, the lower berth. My mother was with me. She was travelling with me to New York. After I secured my berth we had our dinner as soon as there was a call in the car, and I immediately retired, perhaps about eight o'clock.

By the Court:

We both occupied the same berth. That was the berth assigned by the conductor, the lower berth, section 1. We both had that berth.

By Plaintiff's Counsel:

By mother was next to the window and I was next to the aisle. I was on the outer side of the berth and my mother on the inner side. I was next to the aisle and my mother was next to the window. We had taken off all our clothing, and had been asleep, I can't tell just how long I had been asleep, but I had been sound asleep when I heard voices outside of the berth, and I at first thought it was someone going into the upper berth. I heard men's voices and I listened a few moments, and I heard them say, "There is another curtain," then I knew they were coming into my berth, because I had told the conductor that night when he made up the berth to put on
12 the lower curtain, and I knew they were coming to my berth. I thought, I will holler and make some noise so that the conductor will hear me, there is men here. With that I called out, "What do you want, what are you after?" With that, they had the little curtain open, and he said, "We want you." I said, "What do you want of me?" I thought they were robbers, and I thought, well, they are just going to take everything off us, and I was frightened, and I said, "Will you tell me what you want?" and I began talking very loud to them. At that time when they pulled the curtain apart and I looked out there were two train conductors and a porter and two men, who I afterwards learned or heard were detectives; but at that time I knew not who they were. I asked them, "What do you want, what are you after?" They said to me, "We are after you." I said, "What do you want of me?" He said, "You are from Laporte, I want you." I said, "Now, you see I am not from Laporte, and you have made a mistake, you were too quick."

He said, "That's all right, we are after you, and none of that talk to me, or I'll take you out without any clothes on, and don't you be making any show here." I said, "If you take me out of here, you will take me by force, I am not going willingly." With that he said, "Who is that old woman with you?" I said, "That is *is* my mother." He said, "Get out of that, we want you too." They did not ask me at that time for any evidence that I were or were not from Laporte, not until in the midst of the argument, then he said, "Haven't you any deed of land or anything to show?" I said, "I haven't anything;" but afterwards, after the excitement for the second was over, I thought haven't I got anything to get out of this, and I thought——

13 The Court: Let her tell her story. The other side probably will not dispute much of this. I take it you do not dispute much of this?

Defendant's Counsel: No, your Honor.

The Court: You are going to get right down ultimately to the proposition as stated in your opening that the railroad company is not liable for the acts of two strangers called policemen or detectives?

Defendant's Counsel: Yes, your Honor.

The Court: Let her go right on.

Defendant's Counsel: I have not interposed any technical objection what she thought and what she believed.

The Court: The plaintiff may go on and prove the case. There will not be any objection to it, as I understand it.

The Court: We have got down to the point when something occurred, when you were going to give them some facts that you were not from Laporte?

A. Yes, sir.

Q. Tell us about that?

A. They didn't look at anything I had, not until I had gotten out into the aisle and before they demanded me to get out, and I said, "Well, I don't have to expose myself here in front of all the men and dress in front of you;" the curtains were open and these men alongside of me. I said, "I am not going to dress, I am all undressed, and I am not going to dress in front of you." He said, "You will have to." I said, "I will not;" and when I was arguing with him there were five men; the two train conductors, the porter and these two men. The men demanded me to get up. All the men in the berths of that car had their feet out of their berths and their heads, and a whole lot of persons were in their underclothes and night
14 clothes, and were sticking out of their berths in some way or other. These were arguing with me in loud voice. When I got my clothes drawn around me, that I could be seen at all, I gave them a receipt for the Lady Macabees that I had, and they just handed that back to me. I mean by the receipt that I had paid dues before leaving Chicago, of the order called Lady Macabees. That order was in my purse. The lodge is located in Chicago, and I had a receipt in my purse showing my name, and that I showed to them. I also showed them a receipt for the Franklin Evening News that I had

paid the bill that morning, and for three express packages that I had sent by, I think it was the Adams Express Company, to Chicago that morning from Franklin. I also had a bank book they did not look at, only the Lady Macabees, that is all they would look at, and handed that back to me. They kept demanding me to get my clothes on, and I helped pull my mother's clothes on her and on myself, and when I got out into the aisle, I said to the conductor, "I am not the woman that is wanted, can't you do something for me?" I said, "I am not the one, there is a mistake here," and he said. "You had better go along without any trouble." I partly dressed the both of us, and the two men and the conductors of the train took us to the stateroom. The stateroom was clear at the other end. We were at this end of the car, and the stateroom was at that end of the car. We went up the aisle partly clothed in front of all the men that were in the pullman car, there was not a berth that didn't have someone out of them, in front of them, or sitting on the bed or somewhere or other. When we got to the stateroom we finished dressing. We were never alone. In that stateroom while we were dressing there was sometimes five men, from the time we be-
15 gan to dress there were five men, and then one would go out, and another one would come in, and another would go out all the time, so there was someone with us. I noticed the negro porter was in the room while I and my mother were dressing. After I dressed in the car I must have remained there an hour before we got to Utica. When we were taken out of our berths it must have been about twelve o'clock or half past twelve, between twelve and half past at night, when this thing occurred at Syracuse, midnight. The train arrived at Utica about 1:15 or 20, or 35, something like that. We left the car when the conductor said it was Utica; while the two men that had taken us out of the berths, and the conductor, came to the stateroom and took us out, and said to me, "We are going to take you off here, come on and get your things on;" and we put our things on and they took us off of the train. They took me off by the arm and took me down the steps, and my mother the same way. They took her by the arm too. My baggage—the trunks were on the train, and they wanted, the conductors asked me if they shouldn't take my baggage off here, I said, "No, let it go on." He said, "Well, you'll need it here." I said, "No, I will not need it, because this is a mistake." And he said, "Well, I hope it is." My suitcase and my hand grip were carried off by the two men that had taken us out of the berth. As I was getting out of the one car the platform of the other car was full of undressed men, I think there were five, I was looking for a man that had some clothes on him. I was going to ask him if he would tell me what to do, because I didn't feel that anyone else was going to give me any help. I was going to ask him, but there wasn't a man that had any clothes on until I got out on the platform, and when I got out on the platform I
16 pulled away from this man that had me by the arm and I walked over to a man that was standing there and I asked him a question, I said, "I am in trouble, will you tell me what to do?" That was the last I remember until I was in the station, someone

was bathing me with water. There was three or four hundred people anyhow in Utica. After I was taken into the station, after I regained myself, got control of myself again—I don't know what happened to me then when I spoke to the man. I didn't know another thing. I never knew how I got away from the man, I never remembered going from the man into the station at all. The next thing I can remember they were bathing my face with cold water. That was the next I remember anything. They took me out of—there were crowds around, I was begging for air, there was maybe one hundred or more in the station, and they told me if I would get up and come into a small room off of the main station, that perhaps I would feel better. And I did. I went into this room, it was very close, little bit of a room, I began to feel faint again, and I said, "Why are so many in here, and can't you give me some air," and with that why the two men that was with me and a tall man that had not taken us off of the train, came up, light complexioned fellow, sandy, and he said, "Sit them down here." We sat down there and he began questioning me. The time this man began questioning me my mother was there and these two men that had taken me off of the train were there, and this tall, sandy complexioned man was there. There was a large crowd in there, I say large, maybe twenty-five or thirty people, and when I felt faint one of the men told these men to get out, and perhaps five or ten went out of the place, the rest stayed in there. I saw a man standing in front of me writing. I didn't know what he was writing, knew nothing about that. I said
17 to the man that had taken me off of the train, "What do they all want here, what are they after us for?" And this sandy complexioned fellow said, " Why, don't you tell her what she is wanted for?" And this other fellow said, "No." I said, "Well, why don't you tell me what I am wanted for, and what do they want my mother for?" He said, "You don't know?" I said, "No, I don't know, I would like to know what I am taken off the train for, what I have done?" And he said, "Well, that's all right." I had a talk about returning to Syracuse. One of these men, the dark complexioned man that had taken me off the train, said, "Mrs. Heeren, if you will pay your way back, will you buy the tickets?" I said, "No, sir, I will not." He said, "You won't buy the tickets back for you and your mother?" I said, "No, sir; I have paid my way to New York, and I will not pay another cent," whereas the sandy complexioned fellow, he spoke up and said to the fellow that had taken me off the train, "That's all right, I'll attend to that for you." So in a little while the train came in, we were taken into the train by these two men, and when I went to get on the train I felt I was going to faint again, and I said to the man that had hold of me, I said, "Don't make me go in there, I am nauseated, I am sick, and I know I am going to faint, don't take me in there." He said, "You will have to go in." I said, "You will just have to let me go then to the lady's room, because," I said, "I am sick." Well, he said, "I will go with you." So he took me and he went with me. When I came out he took me by the arm and we went back and we sat down. He sat me down next to the window and he stood up in the aisle. My mother

was on the other side of the train. She was next to the window; the man was next to the aisle; one of the two men that had taken
18 us off of the train. This sandy complexioned fellow that had told the man that had me in the station that he would see about the fare back to Syracuse, he came into the train and he said to the man that had me, "You have got her, she is the one, hold on to her."

By the Court:

Q. Who was it that said that, one of the two men?
A. No, sir; it was the sandy complexioned man.

By Plaintiff's Counsel:

He kept asking me questions all the way back to Syracuse, and one question and another, and I answered them, only just personal things, as to where I had been and how long my husband had been dead, and who I was in mourning for, and just questions of that kind. Finally I said, "Who am I wanted for, who do you think I am, what are you taking me for?" He said, "Well, did you ever hear of anybody by the name of Guinness?" I said, "Guinness, no, I never did." He said, "Have you been reading the newspapers?" I said, "No, I have not." He said, "Why?" "Well," I said, "I have only just lost my husband and I have not any mind for newspapers." He said, "Well, if I have to tell you that you were held for murder?" I said, "Me for murder? Well," I said, "That is a terrible thing, isn't it?" And I began crying. He said, "Now, you might just as well stop all this and come along without any trouble when we get down here." He said, "There's no use making any scene." So I tried to control myself the best I could, though I was crying, and begging him, trying to tell him who I was, and how he could find out who I was. All the time he told me when I get to Syracuse he would be certain if I was the woman, and if I was not the woman he would release me. I kept asking him, "When are you
19 going to know whether I am the woman or not," and on the train up, he said, "When we get to Syracuse." And then when I turned to go back to Syracuse again then I said, "When are you going to know?" He said, "Just as soon as we get back to Syracuse." So, of course, I expected that he would know whether I was the woman as soon as I got back there, and I kept asking questions. My mother on that train was on the left-hand side of the car. We were not in a pullman car going back, we were just in the day coach. This man that had me in custody and I were in one seat, and my mother was in another seat on the other side of the car, with another custodian, with the other one of the two Syracuse detectives that had taken us out of the berth. The train arrived at Syracuse about 3:45 I should judge, three something, half past three, 3:15 in the morning. The weather conditions were that it was raining. And before we got off—no, after I got off the train, he said *he* me, "Mrs. Heeren, we will ride up if you will pay for it." I said, "No, sir, I will not pay for it," and I said, "I will not walk up either, and don't you put me in any patrol wagon." There were crowds around. I afterwards asked

why it was it was so crowded that time of night. They said they had telegraphed every place that I was coming back and that the crowds were there to see me. So they took us into a cab, the one man that had taken us off the train and my mother and myself, and they took us up to the police station. When we got out there was a crowd there and I went into, well, in front of a desk, it had a grating in front, and I gave my name and address, and my mother with me the same way. And then a large man took us into an elevator and took us upstairs and handed me over to a woman up there, and this
20 woman was a large woman, much larger than myself and gray hair, the matron of this prison. They first took my mother away from me. And then she said, undress yourself. Then she came back to me and said, undress yourself. She undressed me right there in that room. She took everything I had on me off, every thing except the lower garment next to me, and she took my shoes off and she put her fingers in the toes and turned my stockings inside out. She took my hair down. When she had my clothes all off me, she said, "Pick up your clothes and come on, and I started to follow her. It must have taken her fifteen minutes to strip me; and I picked up my clothes to start into the room to follow her, and I hadn't a thing on me, except just this one that she had loosened, and I was holding that and she said, come on, and when I walked in I saw on that side of the room men in bed and I turned around to her and I said, "I can't go in there." I said, "You will have to wait until I get some clothes on me." She said, "Come on, they are asleep." I said, "What if they wake up?" So I went back and I pulled a skirt on me and a waist around my shoulders, and I went through this room. When I got into the other room she said, Now I will have to go and search your mother, we have to hurry up, because those men go off at four o'clock, or something after four, and I have to hurry you. She opened the door and I saw someone laying in there asleep.

Q. The time she had stripped you had she taken your purse and earrings from you?

A. Everything, I hadn't a thing, she took everything I had.

After I passed through this room where these men were, I was taken into another room adjoining that, and in the next room, there was still another room beyond that room, and on a board that was
21 laying there there was a woman laying there, and I said, "You are not going to leave me in this room alone, are you," to this woman that had brought me in, and she said, "Yes." I said, "Won't that woman in there hurt me?" She said, "No, she won't hurt you any, she is too drunk to hurt you, she will lay there asleep until morning, until she has slept this drunk off, she is an old offender, she has had two or three terms in the workhouse, and she will go down again tomorrow, don't be afraid of her." I walked the floor the rest of the night until about—I sat on a board and walked back and forth and cried. About eight or nine o'clock the matron came in and told me—from the time I was separated from my mother when I was taken up in this elevator, I had not

seen my mother at all during the night. The first time I saw her after I had been separated from her was when they took me to this room where she was with the matron going down to the chief of police. That must have been half past eight, or nine o'clock, in the morning. I saw my mother sitting there, but had no words with her.

Q. Now, Mrs. Heeren, up to this time had these officers shown you any warrant of arrest?

A. They had not.

At this time at half past eight or nine in the morning, I was taken downstairs to the chief of police by an officer in the building. After he examined my mouth and my hands, looked me all over, he said to me, "Well, I guess you are not the woman that is wanted."

By the Court:

Q. Who was this that said that?

A. The chief of police.

Q. He looked at your mouth, you say?

A. Yes, and said, "Well, I guess you are not the woman that is wanted."

22 By Plaintiff's Counsel:

Q. Go on and describe the rest of the conversation?

A. And I said, "Well, I can go then, can I?" And he said, "Oh, no, not now." Well, I said, "If I am not the woman that is wanted, why can't I go? They told me all along just as soon as I got back to Syracuse, you would know whether I was the woman and that I could go right on again." He said, "We have to wait for higher authorities than ourselves before we dismiss you." He asked me where I came from, and I told him. I told him where I was born and raised, and he asked me, if there was anyone that I could get to identify me. I told him who I could call on. I gave him the names of people in Chicago. I gave him the names of people in New York, and I gave him the name of the chief of police at Franklin, Pennsylvania, who I had gone to school with. Then when I had done all this, still he wouldn't let me go, and I said to him, "Well, why shouldn't I go now?" I said, "if I am not there on the first train this morning they will worry about me." He said, "That's all right, we can't let you go." So about one o'clock in the afternoon I asked for my purse, and he gave it to me, just to get something out of it, and took it away from me again, and then sent me upstairs with an officer, and I was taken back into the matron's room.

Q. Did he say anything to you about telegraphing to Franklin to ascertain whether you were the right person?

A. Yes.

Q. What did he say, what did he do?

A. He said he would, and that they had done it. They sent for me to come downstairs again, and an officer came up and took me down, and when I had been down there a while he said they were

certain. He said—now, this was perhaps two o'clock in the afternoon—"Do you want to go on this next train?" I said,
23 "When does the train go?" He told me. I said, "All right." He sent me back upstairs again. About four o'clock, or before four, he sent an officer upstairs after me. This officer says to me, "You have tickets, have you, back to New York?" I said, "No," he said, "You want to give me the money to pay your way?" I said, "No, I am not going to." So when this officer took us in a cab and took us down to the station——

Q. Mrs. Herren, while on the train when you say you spoke to the conductor, before you left the car, did you say anything to the conductor, or did the conductor say anything to you about furnishing tickets for your return to New York, when you got out of this trouble?

A. He didn't say anything about furnishing tickets, but he gave me two little stubs.

Q. You have them?

A. My mother has them right there. He gave me two little stubs at Utica before I got off the train.

Offered in evidence.

By the Court:

These are the two stubs I referred to, given to me by the conductor of the train at Utica.

Q. For the purpose of continuing your journey if you got out of your trouble?

A. I didn't understand I could do that. I would have to pay my fare on, he said, and then at any time I turned these in,——

By Plaintiff's Counsel:

Q. Turned these in and get your redemption?

A. Yes, I suppose so.

Q. That was your understanding of it?

A. Yes, sir.

Defendant's Counsel: I won't object now, if I find they are issued by the conductor.

24 Plaintiff's Counsel: They are both consecutively numbered.

The Court: Assuming their authenticity they go in evidence without objection?

Defendant's Counsel: Yes.

Put in evidence and marked Exhibits A and B.

Plaintiff's Counsel: I offer in evidence the Pullman tickets indicating they were taken off the train at Utica.

Defendant's Counsel: I make the same reservation.

The Court: Yes, assuming that to be authentic too, that goes in evidence without objection.

Defendant's Counsel: Yes, on that assumption.

Put in evidence and marked Exhibit C.

When they spoke to me on the train, these two men, about Laporte, they say Laporte, Indiana; I finally left this station house about four

o'clock the following afternoon; my mother was with me. What time I arrived home? Sometime at night, in New York. These tickets I have never redeemed. From the time I left my mother at half past three or four o'clock in the morning at the Police Station, until about half past eight or nine the next morning, I did not see her. I wasn't able to talk to her until about half past twelve. I was kept downstairs most of the time in the Chief of Police's office. Prior to this occurrence the general condition of health of my mother was good; she did not suffer from any nervousness or any complaint; I have resided with her since my return on May 9th continuously; I have been living at home with her all the time. I have noticed her present condition of health; she doesn't sleep, hasn't slept nights. There is a marked tremor of the hands; and then she has
25 sleepless nights. My mother can tell these things.

I was never arraigned in any court before any judge or judges on this matter at all; no badge was shown to me on the train by anybody, or any of those two men.

Cross-examined by Defendant's Counsel:

I have heard you remark to the court about your not substantially disputing what I said, and I won't regard it unkind, any question you ask me. I first changed from the train which I took at Franklin, Pennsylvania, at Ashtabula, Ohio. When I got on the train at Franklin, Pa., the conductor came around and asked passengers for their tickets, and I did show him the tickets I had bought at Franklin, Pennsylvania. And that after showing the conductor that ticket which I had bought at Franklin, Pennsylvania, I rode on that little branch as far as Ashtabula, Ohio, and there I changed to another train, and that is the same train which I rode afterwards to Utica; the same train.

By the Court:

There was no other change of cars from the time I got on at Ashtabula, until I was taken off of the train at Utica. It was the same train.

By Defendant's Counsel:

And then after I got on the train at Ashtabula, the conductor came around and asked passengers for tickets. I showed him my ticket, and my mother showed him her ticket. He must have taken the tickets up; I didn't have them any more. I didn't see the margin.

26 Q. And then you rode on that train to Buffalo?

The Court: Erie, I think she said is where they gave her a berth.

A. I don't know, I had gone to bed.

By the Court:

At Erie, I was given the berth that I refer to.

Q. And you retired at Erie or somewhere there?
A. I was given a ticket for the berth between Ashtabula and Erie.

By Defendant's Counsel:

Q. How far is it, do you know, from Ashtabula to Erie?

The Court: In time, or miles?

Defendant's Counsel: In either.

By the Court:

Q. About how long did it take, can you recall, from Ashtabula, until you retired?

A. Well, it must have been——

I had my dinner in the dining car, and almost immediately after that I retired. I think it was about eight o'clock.

By Defendant's Counsel:

I can't remember just exactly what time I took the train at Franklin, Pa., but I got to Ashtabula, and took a train about four o'clock out of Ashtabula, I believe 4:16 it was, in the afternoon. It took me to ride from Franklin to Ashtabula, about two hours, maybe a little over two hours, and then I took my berth near Erie, Pennsylvania. I must have been asleep when the train got to Buffalo. I was not conscious of any locality until the train reached Syracuse.

The voices first in the aisle of the car awakened me. I didn't
27 know where I was; the voices awakened me; I did not afterwards, while those voices were going on, learn I was then in Syracuse. I did not know where I was at that time; not at that time, I did not. I do not recall at any time this argument, as I call it, was going on between me and these two officers. I did know where the train was after I was awakened. When I heard the conductor say to these men that had taken me out of the berth, you cannot take her off until the next station at Utica; and then I knew Syracuse comes before Utica. I heard him say that, heard the conductor say that. I can't tell you whether the train was standing still or not, when I heard the conductor say that. The noises which I heard from those men, they must have been the voices of these men, because they were the same voices that were talking; and immediately afterwards opened the curtain.

By the Court:

Q. Were you hurried, or were the actions of these officers deliberate in giving you ample time to do whatever you wanted to do?

A. No, they told me if I didn't get up and get out they would take me off without clothes on.

By Defendant's Counsel:

Q. Afterwards, after you heard the conductor say that they could not take you off at Syracuse, they would have to take you off the next station, did they give you any more time then?

A. Yes, they did.

Q. And you were then given time to put on all the attire you wanted to?

A. Not in the aisle I didn't finish dressing, I finished dressing in the stateroom. After that I had some of my clothes on my arm and carried mine and my mother's to the stateroom and finished dressing there.

28 We only had the lower berth; I don't know whether the upper berth was occupied. I did gather some clothes about me and then went into the stateroom; no passengers were there in the stateroom. After I got in there, me and my mother were not allowed to remain in there alone; we were never alone one minute; I was never alone for a second until I got on the train to come back to New York. I went into the stateroom. I think I had on, I pulled all the clothes on me, but nothing was fastened onto me. I didn't have my waist on; my petticoat only, and my other skirt I had over my arm; my shoes were on my feet but not laced; and after I was in there, I say these two men went in also. I don't know who carried my baggage in with me, or luggage; who took the luggage. When I first went to the stateroom, I don't think there was a thing in there. Then afterwards I asked them to bring it in. That I don't remember, who brought it in; the articles of luggage there that I had with me in my berth was a suit case and a hand grip. And these afterwards were brought into the stateroom, and there was some of my wearing apparel was brought in to me by the colored porter; and then after I got in the two officers were in there with me—not all the time, one would go out and the other would come in, but there was always somebody there with us; always one or the other of the officers, or conductor or porter, we were never alone. I can't specify whether it was always an officer or a train man, I don't know that.

Q. Now, recall if there was not always with you one officer or the other?

A. I don't remember once when there was not.

Q. For how long a time, do you remember?

A. It wouldn't have been more than two, three, four or five minutes.

Q. Now, do you remember whether one light, one bull's-eye light or two were flashed into your berth?

A. Only one.

29 Q. And was that held by one man?

A. That I can't tell you.

I afterwards recognized him as one of the officers who was with me in the stateroom that went back to Syracuse with me. When the berth was first opened, both officers were there. I think I have told all the conversation that occurred as I remember it up to that time, up to the time they took me out. I told them who I was, while I was in the aisle, while I was in the berth, and I told them when I was in the stateroom; all the time I was pleading with them. I tried to identify myself.

Q. When did you first offer, please recall distinctly, as to this, when did you first offer them anything to show who you were?

A. In the aisle before I went to the stateroom.

Q. And you showed that to which of the officers, do you remember?

A. I couldn't tell you which one.

The Court: What do you claim if she had not done it?

Defendant's Counsel: My understanding is it was not done until after they were in the station at Utica.

The Court: Assuming that to be true, what then?

Defendant's Counsel: Well, it is only an incident, the time when that incident occurred.

The Witness: I am positive when it was, I am just positive, because I was in the aisle, I was standing in the aisle.

Before the train stopped at Utica, I do say that the conductor gave me these two little papers, Plaintiff's Exhibits A and B. Yes, I asked for them, I didn't have enough money to pay my mother's and my own way on, and I wanted to know how I was going
30 to get on further, and I asked wasn't there some way that I could get on, and the conductor came and gave me those. I can't remember, I don't know if he explained to me how I could use them or should use them; no, I have not used them. I never have tried to use them.

By the Court:

Q. What was your understanding of the purpose of them, your tickets having been taken up somewhere back at Erie, you knew you were at Utica, and that they intended to take you back to Syracuse, and then you were without tickets to get to New York?

A. Yes, sir.

Q. And it was your understanding of these two papers you could go on on those, or that you would have to get your fare in some other way, and present them afterwards for redemption?

A. I didn't know what was to be done with them until I asked some one, and I believe the Chief of Police told me.

Q. He told you the purpose for which they might be used?

A. Yes.

Q. It was what?

A. He said you turn them in and you get the refund.

By Defendant's Counsel:

Q. Was it on the way from Syracuse to Utica that you learned they were seeking Mrs. Guinness, or was it after you got to Utica and taken back?

A. It was on the way from Utica to Syracuse, on the back journey, about half way back with us.

That was the time I first heard the name Guinness in connection with this matter.

Q. And then you do not now claim that they told you that on the trip from Syracuse to Utica?

A. No, sir, they did not, they told me that going back from Utica to Syracuse.

31 Q. And they did not tell you that in the waiting room at Utica?

A. No, sir.
Q. Didn't tell you that?
A. No, sir.
The Court: She said there was some scene in the station there, there were many people she said, and I think something, either she intended to describe a faint, or it may have been some other act, at least, she says she remembers nothing until they were bathing her face. That is what happened in the station.
Q. You lost consciousness there for a while?
A. I don't remember. I walked up to this man on the platform of the depot—I lost consciousness in the station at Utica. I do not remember how long I was restored to consciousness before I was taken back on the train again.

By the Court:

How long a time elapsed from the moment I was having my face bathed until I was on the train to go back to Syracuse, I couldn't tell you. It must have been half an hour.

By Defendant's Counsel:

Half an hour. After my face was bathed the two officers that had taken me out of the berth, and the tall sandy complexioned man whom I inquired about, the three of them were sitting on the seat asking me questions, and I turned to the tall man, the sandy complexioned man, not the one that had taken me off the train, and said, "Well, what do they want me for?" And I had a conversation with him about how they could find out who I was. That conversation was—it was over a button in his coat, and I told him who I was, and I told him where I belonged. I was not taken to
32 the ladies' waiting room by one of the officers in Utica:

By the Court:

I was in the general waiting room, and was taken to a little bit of a room—small; someone told me it was the agent's the station master's office. First I was in a large room, and I saw a large number of people there. And this was a smaller room, and there *there* were about fifteen to twenty-five people—were a few people; and some of these were afterwards sent out; when I began to feel the air close again and I complained. I do not remember if the curtain was down, the curtain that looked down on the station platform, drawn down so people could not look in. I do not recall that. In getting off the train each one of the officers went; another officer went with my mother. One officer took my arm and the other officer took my mother's arm. I didn't go into any waiting room at Utica. At Utica I was taken into the main waiting room. And then I remained there with these officers until a train arrived from the east and stopped at Utica, and upon that I went back to Syracuse. These two officers led me back from the station at Utica, on that train. I didn't pay the fares, me and my mother didn't pay any fare; the conductor did not come up to me and ask for tickets; not that I

knew; I was sitting on that train going from Utica back to Syracuse, next to the window and the officer sat next to the aisle. I did not see the officers with me give a ticket to the conductor. My mother was on the other side of the train, next to the window, the officer next to the aisle. I did not see the officer give tickets to the conductor when he came on to the seat at which my mother was sitting. No ticket was asked of me, nothing was said. When
33 the train reached Syracuse, then I was taken off the train by the officers there. I was taken into a carriage, the three of us, my mother and an officer. Only one officer went into the carriage, and I guess the other one was up on top some place, because when we got to the station he was there also; the officers took us in front of a desk and we gave our names and addresses. This was the desk in the police station I suppose. I knew then I was in the police station. I was not asked any question by the officer at the desk; only my name and address; he did not tell me what I was charged with. He asked something though of the officer that was with me. I didn't hear what the officer said, I think the officer said—I can't tell it from hearing him say this, I don't hear him say it, you know, but the charge was murder; the charge was murder. The officers told me that; I was charged with murder. About half way from Utica to Syracuse, he told me that alone. The officer sitting with me told me alone; that I was charged with murder, and said I was also said to be Mrs. Guinness. That is who I was taken for. I did not hear the officer say anything to my mother, the officer with her, or the officer with me, on this trip from Utica back to Syracuse, on the subject of murder. I couldn't have heard it, you know, even if he had. I heard nothing; no, I did not.

By the Court:

Separating me from my mother were the two men and the aisle, and they were about two seats in front of us, on the other side.

By Defendant's Counsel:

So far as I knew I do not know that I was the only person against whom the charge of murder was made; when they ordered us to get up out of the berth, they said, "We want you." They said
34 to my mother, "We want you too, get up and get out of that."

Q. Mrs. Heeren, I asked you with respect to the officers saying you were arrested for murder on the trip from Utica to Syracuse, that is the point, the time and place. Now I say with respect to that, all that you know is that a charge of murder was made against you?

A. Yes, sir; that is all I know.

By the Court:

Q. That is you were the only one of the two, yourself and your mother that was accused of murder, so far as you recall?

A. Yes.

Q. But you say your mother was ordered out of the berth on the statement of one of these officers who said "We want you too?"

A. Yes.
They said, "We want you too, get up and get out of there."

By Defendant's Counsel:

At any time from the moment that these flash lights were thrown into my berth up to the moment that I was discharged, no charge of murder was made against my mother, as far as I know. I don't know if the conductor of the train on which I rode from Buffalo to Utica did or did not get off the train at Utica. I didn't see him at any time; no, I did not. After I got off the train at Utica, I did not see the conductor; I am thirty-five years old—thirty-six, going on thirty-six. I am about five feet five and a half tall, I believe. I weigh now about 210. I weighed 180 at that time. My mother is sixty-nine, sixty-eight, going on sixty-nine years; her height is about five feet, four. She weighs about 128.

O. K.

T. S.

35 LUCINDA BURTON, one of the plaintiffs, being duly sworn, testified as follows:

Direct examination by Plaintiff's Counsel:

I live at 61st Street now, New York City. I live there with my daughter, Mrs. Heeren, and Mrs. Rockefeller. I am the plaintiff in this suit. I remember the 8th of May, 1908.

Q. Where were you that day?

The Court: I think Mr. Connell, that all of these facts are without dispute. I understand that there is not any contest but that these ladies got on at Franklin, Pennsylvania, that they bought tickets for the City of New York by the New York Central and changed at Ashtabula, Ohio, that while on this train somewhere between Ashtabula and Erie they got this lower berth in this Pullman car, and that while in that berth they were taken from it as the plaintiff Mrs. Heeren says. Down to that point, I take it, there will be no contest?

Defendant's Counsel: No, your Honor.

The Court: I so understand it from your opening.

Defendant's Counsel: Yes, sir.

The Court: If I have overstated it?

Defendant's Counsel: Of course, that statement does not intend to include all the incidents of the transaction.

The Court: I do not mean you are foreclosed from giving your version of it, but I thought in substance these facts, the salient features of what I have stated were not controverted.

Defendant's Counsel: I will say I do not intend to contro-
36 vert the salient features. Any testimony that may come from us may possibly change a detail here and there, but no essential feature.

The Court: Now, down to the point where these ladies heard these voices let her describe from the time she was taken or required to get out of this berth.

I remember the incident of being taken out of my berth at the train at Syracuse. In the first place I heard my daughter saying, "Who are you and what do you want?" What first attracted my attention as we were sleeping in the berth was—well, I was sleeping in the berth; so Mrs. Heeren says, "Who are you and what are you after; what do you want?" and I looked around, and I saw a light flash in our faces, in my face and her's too, in the berth.

Q. Who did you see there?

A. I saw there two men, one man had the lantern, the man that took hold of my arm had a lantern and he ordered me to get up and dress. I said I can't dress.

They said to Mrs. Heeren, after she said, "Who are you and what do you want?" he said get up and get dressed. She said I can't dress, I can't dress just now, something like that. But who do you want, she kept saying to the man, to know who he wanted. She kept telling him she was Mrs. Heeren from Chicago. She did get up. They told me to get up and get dressed, I want you. He said Mrs. Heeren, my daughter, who that old woman was in there. She said, "That is my mother." He said, "You come too, I want you too, get up and get dressed." I told him I couldn't dress, I would have to wait until my daughter could help me, I was too nervous, I couldn't dress myself, and he had the curtain pulled aside. I got up. I saw these two men, and when I got out in the aisle I saw two conductors and the colored porter standing by the side, looking.

37 The Court: By the side.

The Witness: Of the aisle like; at our berth.

By Plaintiff's Counsel:

While I was standing in the aisle I got my clothes thrown around me in some way, I don't know how, and we all started for the stateroom, I believe. One of these men said I should go to the stateroom. He said, "Hurry up and get dressed and come along." I saw Mrs. Heeren talking to the conductor. I heard Mrs. Heeren say, "Can't you do something for me, can't you help me?" She said that to one of the conductors. I noticed in the train there were persons looking out of their berths. They all had their heads sticking out, and some had their feet sticking out. I don't know what they wanted their feet sticking out for. My daughter went with me up the aisle of the car. This man that was with me was ahead and I come next and my daughter come next, and the other detective back. I went to the stateroom. Our berth was down at the end; No. 1, lower berth, and the stateroom was up at the other end of the car. I think the car was moving, I think it was moving at the time. When I got to the stateroom there was the conductor there and the porter was there, and these two men, they were all there; some would come in and some went out. I didn't know any of them. When I went into this stateroom, I finished my dressing there, and I asked for a drink of water, and I couldn't hold it in my hand and made it fall. While I was dressing in this room, I wouldn't say positively whether this negro porter went inside, but he was right there, he could see us, they could all see us dressing, there was no trouble about it, no privacy; they

could all see us dressing. We remained in there before the train stopped, it might be fifteen minutes, and it may not have been
38 as long and it might have been a little bit longer. We were in the stateroom before the train came to Utica. I say it might have been fifteen minutes, and it may not have been over ten minutes, I am not sure, for the car was going at the same time; I couldn't tell, I had no watch; I didn't keep any track of the time. I had no watch that I know of now. When the train got to Utica the man said, "Here, we will get off here," and took me by the arm and helped put me off. I didn't know for the moment whether he was pushing me or pulling me along; there was a big crowd there, and it was raining. When the train stopped at Utica, I don't know if I looked at the car ahead; I don't recollect of looking at the car. I looked around the station as I was coming down the steps. Yes, there was a big crowd there; there was such a big crowd. We went in the station, these two men, one had me by the arm, and the other one had Mrs. Heeren by the arm, and told us to take a seat there. She asked for a drink of water.

The Court: You say she seemed to have a spasm and fall?

The Witness: It was not a spasm, it was just nervousness.

Q. Did she fall?

A. She fell over on the seat, like.

And she said, "Water." I asked for a drink of water, or glass of water, and when I went to take it I let it fall. I had my glove off, I lost it; I took some water and a man picked the glass up in some way and brought me a glass of water, but I couldn't hold it in my hand. I had taken my glove off, and I took some water in my hand and washed her face and she came to. This was inside of the depot at Utica, in the large waiting room. I can't recall just exactly
39 what was said there. We went from that room into another room. This man that had me by the arm all the time, put me on the car, and the man that was with Mrs. Heeren put her on the car. Before that, I did hear some conversation between Mrs. Heeren and this man as to who would buy the tickets to go back to Syracuse. I did see another man, besides these two men, in the station at Utica, speaking to my daughter, but I didn't see him well enough to recognize him. Then I was taken into this little room. In this little room there was a lot of strange people I didn't know, and I couldn't see anything very material to go in there for, didn't see anything in there. I remained at this station in Utica, I should think, a half an hour, very nearly. I recollect the time I arrived back in Syracuse. I should think it was three o'clock anyway, in the morning. It was raining yet very hard; the water ran through my hat down on my shoulders. We stood there at the station in Syracuse some little time and there was a man come up and wanted to speak to my daughter, I believe, and this man pulled her away, wouldn't let her talk to him; a strange man that come up and would have spoken to her. He had a Masonic badge on and would have spoken to her, but she wasn't allowed to speak, she wasn't allowed to talk to him. I went in a carriage. We were put in a carriage. We went to the police station. From the railroad station to the police

station might have been ten minutes ride, or five minutes, quite a little ride. I should think, it seemed to me. When we got to the police station, they took us into a little office; there was a man there that had, I think, brass buttons of some kind on; large buttons on and badge. We give him our names and addresses, I don't know what he wanted me for. The man didn't say anything at all to me, only he wanted my name and address and then we were put in the elevator. We went up to the third floor. There was a large man went up with us; I don't know who he was. When we got up there, there was a large woman who had gray hair. She searched me.

By Plaintiff's Counsel:

Q. Mrs. Burton, you are now going to tell the rest of this story from the time that the matron separated you from your daughter and took you. You tell us now what the matron did or what she said, what transpired after you were taken away from your daughter, Mrs. Heeren?

A. I was taken to a room and my daughter was taken away from me. I didn't see her until the next day, the next morning sometime about nine o'clock, I should judge. They took me in another room, and they took my satchel and pocketbook also, took them all from me, took my pocket book and satchel away from me, I didn't see my daughter until the next morning about nine o'clock, perhaps later than that. I don't remember just exactly, because I was so nervous; and she took me in the other room. It was a room there was no furniture much in it, about ten feet square. I should think. She told me she would have to undress me, she would have to search me, and she said, "I will have to take off your clothes. I told her I couldn't, I was too nervous to take off my clothes. She told me to take off my clothes first. I said I am too nervous, I couldn't do it. So she come and took off my hat and began to take off my clothes. My dress and all my skirts, and everything I had on except a little small undershirt; a little chemise. She took my shoes off and stockings and turned my stockings the other side out, and looked in my shoes. After looking in my shoes, she turned my clothes, looked over them, turned them all wrong-side out and looked over them.

Q. What did she do, if anything, with the little chemise that was on your body?

A. She ran her hands up over my shoulder, took down my hair and ran her fingers through my hair.

Q. How long were you in that condition with her in that room?

A. It must have been as much as half an hour, or more, she examined my chemise that I had on my back, turned it right over my shoulder, after all this had been done, I told her now she would have to dress me, I could not dress, and she got my clothes and helped me dress, my pocketbook, she gave it back to me and kept the money and took my grip and looked all through it, and then I got dressed, she helped me dress; fastened up my clothes; she opened a room on this side, on the right-hand side and told me I should go in there and stay until later on.

In that room there were two prisoners, women, I could not tell whether they were asleep or were awake; I couldn't tell because they had their heads covered up, I couldn't see whether they were asleep or awake. I noticed about the women, one of these women had a great, big swelled up face as if she had been struck with something; she told me to go in there and stay in there till later on, and she locked the door, locked me in there, this room with beds in it; there were women prisoners in the place, each one got a bed of their own. Well, I couldn't tell exactly how long I remained in there, because I was so nervous, but it must have been nine o'clock before I was taken out—let out in the morning. What took place after that, I don't just recollect. I saw my daughter about, I couldn't just tell, but it was near noon, she come in where I was in the matron's room, no one was with her. I stayed in that police station until four o'clock in the afternoon and then I was permitted to go, there was
42 no warrant of arrest ever shown to me. I was never arraigned before any judge or justice of any court, no charge was filed against me to my knowledge, there was no badge exhibited to me as authority of any officer. Prior to this time that I was traveling from Franklin, Pennsylvania, over this railroad, I had been living out in the country, about seven miles out of Franklin. I lived with my children, my duties at home were not any particular thing, I just done what I wanted to. I did not do the household affairs of the family. I done all kinds of work, little of all kinds. I done all the housework, I could do any kind of housework, my health was good, and I could do sewing and all kinds of work; my health was good enough to do any kind of work.

I arrived home finally in New York, between nine and ten o'clock, as near as I can remember, I didn't take much notice to the time because I was nervous and I didn't think about it at the time.

Q. Since you have returned to New York, have you been able to do the same work with the same ability that you did before this occurrence took place?

A. No, sir, I have not.

Q. What is the difference now, what do you do now, what is there now that you do not do that you did formerly, and which is the result of any physical change?

A. I can't do any housework at all. I let things fall; I am so nervous my hands shake; I can't hold on to anything, I can't do needle work.

After I returned home, I employed a physician, Doctor Mack, he is in court today.

Cross-examined by Defendant's Counsel:

I saw the curtain parted and the flash of a bull's eye light in my berth and I recognized the lamp as being held by one of the
43 officers who afterwards took us off the train, and one of these men took me by the arm, I say he led me from the berth to the stateroom, the officer went ahead and I went back of him, my daughter was behind me, the man who took her off of the train

was behind her, and these two men that took me to the stateroom were the same men that afterwards took me off of the train at Utica, and they were the same men I was in the station house with at Utica, and they were the same men who afterwards took me from the station back on the train and who sat in the same car with me when I went from Utica back to Syracuse. When I left my berth to go to the stateroom, I had part of my clothing on. I threw the rest around me, and had something, my coat or something on my arm and my daughter had something on too, had some underclothes, something like that, the man who had me by the arm carried my satchel, the man that took my daughter off out of her berth had her by the arm and he carried her satchel, I was in the berth; my daughter was with me in the stateroom; there was there with me these two men, the two conductors and the colored porter, they come in and went out at different times; they were not in there all the while; they came and went—went in and out of the stateroom while we were dressing. The conductor didn't bring the luggage in the stateroom for me or the porter, I don't think so. Those men that took us off the train brought our luggage in.

Q. Didn't the porter come in there to see if there was anything you wanted, anything he might do for you?

A. He come in there and I asked for a drink; I don't know who gave me the drink; I couldn't tell that, but I dropped the glass.

I don't know which one. I asked for the water and it was brought to me; no, I don't remember the colored porter particularly bringing me anything. I saw my daughter get tickets from a man, I
44 believe it was the conductor, not in the stateroom. I don't think it was done on the way from Syracuse to Utica, on the car I think it was, I ain't sure. I couldn't recollect where it was done.

Q. It may have been done there?

A. It may have been in the stateroom and it may not have been.

I don't think the conductor got off the train at Utica. I didn't see him, I did hear my daughter ask the conductor if he could not do something for her, and I heard him say that he thought she had better follow the officer; when I was in the station the two officers were in there with me and one of them led me by the arm from the car into the station and the officer had my daughter by the arm from the car to the station. I was first taken into the large waiting room and afterwards we were taken into a smaller room, that was done and there I remained until the train arrived at Utica, on which I afterwards rode to Syracuse. I think so, we were on the platform some little time, it was raining very hard and the conductor, these two men, these two officers, let us back to the train from the station at Utica; they found a seat for me, pointed it out to me, the man that had me by the arm pointed out this side for me to take a seat there. I sat down next to the window, he sat in the *street* with me next to the aisle and the other officer led my daughter into a seat and asked her to sit next to the window and he sat next to her, one

officer sat a little back further, when the conductor come in and asked for tickets. I saw something about the tickets, but I was so nervous——

The Court: That was while on the way back to Syracuse?
Defendant's Counsel: Yes, sir.

45 Q. Tell all you remember, what you saw?
A. I couldn't tell very much, I just saw the conductor write something for my daughter and it looked like small tickets or something. I was back of her all the time.
Q. Did you see either your daughter or the officer with her give to the conductor a ticket when you were arriving at Utica—Syracuse?
A. I couldn't say that I did positively, I don't remember that.

I did not see the officer sitting beside me with a ticket or tickets on that trip, I didn't pay; I say I didn't pay any fare back from Utica to Syracuse. My recollection as to where I first heard the officer say anything about my daughter being Mrs. Guinness was in her berth, I didn't hear him say that she was charged with murder. I heard her ask him what he wanted of her, but he didn't tell her in my presence that I have any recollection of.

Q. You are able to say what the officers didn't tell. I wish to ask when you did hear him say anything about your daughter being Mrs. Guinness at any time before you reached Syracuse?
A. I didn't hear him say that she was Mrs. Guinness.
Q. You did not?
A. No, I didn't hear that.
Q. Did you hear him say that she had been charged with murder?
A. I didn't hear that part of it.
Q. When did it first come to your knowledge that she had been?
A. It was on the way back from Utica to Syracuse she told me I think it was that she told me that she was charged with murder.

A man said you are from Laporte, and she said I am not from Laporte, I am Mrs. Heeren, from Chicago. That was I believe before she got out of the berth or at the berth.

Q. Now do you understand me to ask you if you learned that fact at any time before you got off the train at Syracuse, I
46 don't mean at any time?
A. Going down?
Q. During the trip from Syracuse to Utica?
A. Not until we were going back from Utica to Syracuse I learned that.
Q. You learned it then for the first time?
A. Yes, sir, and I learned it from my daughter.

When the train on which I rode from Utica to Syracuse, stopped at Syracuse, the officer led me off there, they took me off the car, the officer who had sat with me to Syracuse took me off by the arm

and the other officer took my daughter off by the arm and the officers took me to a carriage at Syracuse, one of the officers went inside of the carriage, and the other one sat on the box. I finally got out at some place, at the police station; the two officers led me inside and up to a desk and behind that desk there was a man in uniform with a shield on. I knew him to be some kind of an officer; I didn't know what. I didn't hear him say anything, only told us to give our addresses and our names; that is all I heard the man say and then I was taken upstairs and put in charge of the matron as I have told, I was not taken before another police officer afterwards; another officer did not have some conversation with me. I was not charged with, where I lived and where I had been and what marks of identification I had. I do not have any recollection of it. I did not see that officer whom I first saw when I was brought in again at any time afterwards, the same day, was again taken; no, I wasn't again taken before a police officer. I don't know how I learned that I was not wanted; there was nobody told me I was wanted. They charged Mrs. Heeren with murder. I knew my daughter was wanted for murder, I say; that is what they said, that is what these officers said. At no time did they charge me with murder.

47 Q. I say, Mrs. Burton, were you at any time charged by any of the police officers of Syracuse or at any other time with being a murderer, you were not charged by them?

A. No.

Q. Isn't it a fact you went along with your daughter so as to be with her?

A. No.

Q. And help her in any way that she might be helped?

A. No.

Q. A companion in the same way that you traveled together, isn't that it?

A. Because we were traveling together.

The Court: You understand his question? He wants to know whether you did not go to Syracuse voluntarily and go off the train voluntarily?

The Witness: No, sir; I did not. They gave me no chance to go voluntarily, they ordered me out of there.

Q. Did you at any time ask either of the officers to let you go on to New York?

A. No, I didn't ask them.

Q. So far as any request you made the officers didn't refuse to let you go on to New York?

A. Didn't tell me I could go at all to New York, they ordered me out of there or they would take me out. I didn't make any request at all. I lay still and he come and ordered me out of the berth.

Q. You made no request of them to let you go on to New York?

The Court: Did you ask them to let you go to New York?

A. No, I did not, but I lay still until they come and ordered me out, they wanted me, I didn't refuse.

Q. They said to you that they wanted you?

A. Yes, they said to me that they wanted me too, ordered me out of the berth, if I didn't get up they would take me out without clothes.

48 Q. I want to ask you clearly if you at any time asked them to let you go on to New York?

A. No, I didn't ask them, because how could I?

Q. Did they ask you to go *to* Utica back to Syracuse?

A. They put me on the train.

Q. Did they ask you?

A. Took me by the arm on the train to go back.

Q. You are talking about one thing and I am asking about something else. Did they ask you to go back to Syracuse with them?

A. Said I had to go back with them to Syracuse.

Q. When you were at Utica, did they tell you that?

A. Yes, and took me on to the car.

I don't remember what time it was, late, along three o'clock, something like that, I heard my daughter testify about her age, her size and weight and I heard her testify about my age and size and weight, as to my age and size and weight she did testify correctly.

By Plaintiff's Counsel:

The first time I heard my daughter was charged with the crime of murder was on the train going back to Syracuse, at the time that I was taken out of my berth. I offered papers or letters of identification on the train. Mrs. Heeren had offered receipts from clubs. I offered a letter from my own brother to myself. I showed that to this man that had me by the arm all the time. I showed him this letter, and he read part of it, and handed it back to me.

Q. Was the conductor of the train present at that time, at the time you offered this letter?

A. They were just at one side and were there conversing when I handed this letter to this man that had the lantern and flashed it in on our berth.

O. K.
T. S.

49 CHARLES MACK, called as a witness on behalf of the plaintiff, being duly sworn, testified as follows:

Direct examination by Plaintiff's Counsel:

I reside at 311 West 83rd Street, New York City.

Defendant's Counsel: I concede his qualifications as a physician and surgeon.

I remember seeing Mrs. Burton in the month of May, 1908, the witness who has just left the stand, I saw her at 104 West 61st Street. I was called in to see her and to treat her, the condition I found her in when she came there she was nervous and suffered

from insomnia. There was trembling of her arms. That is practically all, after that time I treated her, I prescribed for her.

By the Court:

Prescribed sedatives to quiet her nerves; she was in wrought up state, just nervous state, wrought up from excitement and feeling.

By Plaintiff's Counsel:

I have made just three visits in all to her as far as I remember, my last visit was February 23rd of this year, I found her condition at that time to be trembling of the arms and some nervous condition. I would say that there was some improvement from the time I saw her nearly three years ago, as far as the excited state that she was in, that of course had disappeared. I would say that so far as I know the trembling was just the same, that is the trembling of the arm.

Cross-examined by Defendant's Counsel:

These were the only times that I ever saw Mrs. Burton, I did not see Mrs. Heeren.

50 The Court: You mean did not see or did not attend her professionally.

I did not attend her professionally or prescribe for her, I prescribed only for Mrs. Burton. I saw her in all three times that I know of, these remedies that I prescribed have a soothing effect; it was given to have a sedative effect, and when I went back there February 23rd, I found this nervous ailment had disappeared to a certain extent, to a large extent; I said, however, that the trembling remained. I, of course, know that Mrs. Burton is an old lady sixty-nine years of age; trembling in the hand is a common condition of people of sixty-nine years of age, I would say so. I did not know Mrs. Burton before I visited her professionally; what her condition was before, of course, I don't know. In regard to insomnia I was told, that is a symptom we have to get from the patient; there are a multitude of conditions that cause insomnia; I might at certain times have had it myself, every man that is active mentally or physically temperament will at times have insomnia; there are a great many causes that can cause insomnia of course.

The Court: Without stating all the facts here, the arrest of a person, being taken to a police station, and being undressed and searched, taken out of their berth at the midnight hour and those things, would that be a competent cause of insomnia?

The Witness: It would, that I found in this case.

Q. And for the nervous condition you found?

A. It would.

O. K.

T. S.

51 JAMES J. LANDERS, called as a witness on behalf of the plaintiff, being duly sworn, testified as follows:

Direct examination by Plaintiff's Counsel:

I am a police officer for the New York Central Railroad Company. I am what is called a railroad detective. I was a railroad detective on the eighth and ninth of May, 1908, and I was stationed at headquarters at Utica, New York. I had no regular hours of duty, on the eighth and ninth of May. I am supposed to be on duty as a railroad detective in the employ of the railroad, any time I am called. If I am at the railroad station at Utica, I am supposed to be actively in the employ of the railroad. I am employed under a salary by the railroad and I was on the eighth and ninth of May, employed under a salary. And on the night of the eighth of May, and the early morning of May 9th, I was at the railroad station at Utica in my capacity as a railroad detective and employee of the New York Central & Hudson River Railroad Company. I was called there. I was notified to appear here. I was told I was coming as a witness in this case and I knew the name of the cases that are on trial here. I do not know there is any other case on trial in this city today. As far as I know, these are the cases that arose out of this affair at Utica. I was at the railroad station on the nights of May 8th and 9th.

O. K.
T. S.

CORA B. HEEREN, recalled and testified as follows:

By Plaintiff's Counsel:

I have just seen the witness Landers. This is the man I identify as being the man I saw at the railroad station at Utica, on May 8th.

52 By Defendant's Counsel:

He is the man I referred to that I asked questions of in the station. He is not the man who came to my berth and took me off the train, but he is the man that came into the train and said, I was the woman, "hold on to her, you have got her." He was not the man who was on the train from Syracuse to Utica.

Plaintiff rests.

Defendant's Counsel: I ask your Honor to dismiss the complaint, upon the ground that the facts fail to show that the alleged arrest of the plaintiffs was done by the defendant or by any agent of the defendant, or that it was participated in by any agent or employee of the defendant in pursuance of any authority which he exercised properly on behalf of the defendant; that the evidence discloses that the arrest was made by the police or peace officers upon their reasonable belief, that the plaintiff, Mrs. Heeren, had committed a felony. And upon the further ground that it was not the duty of the defendant to resist the police officers in the carrying out of

a purpose to arrest the plaintiffs as passengers upon the defendant's train for having committed a felony; and that the evidence fails to show that the defendant or its agents omitted to exercise any duty which they were bound to exercise towards the plaintiffs as passengers.

Motion denied; exception.

O. K.
T. S.

53 LAWRENCE MCMAHON, called as a witness on behalf of the defendant, being duly sworn, testified as follows:

Direct examination by Defendant's Counsel:

I am employed by the City of Utica in the capacity of police officer and I now am a member of the police force of the City of Utica and I was on the eighth of May, 1908. I was down in the station at Utica on the morning of May 9th, 1908. I saw the two plaintiffs there, Mrs. Heeren and Mrs. Burton. I saw them on the stand today. I was detailed there, by Captain Ercker. He is the night captain of the police force of the City of Utica. He is not the head and chief of the police of the City of Utica. He is night captain. He was my superior at that time. I was ordered by him to proceed to the New York Central Depot to meet a train that was due about 1:30 A. M. the morning of the 9th. Information had been received that two Syracuse officers would take a woman off the train supposed to be the Mrs. Guinness, of Laporte, Indiana, that I should go there and if any assistance was required to render the assistance. Also, if any crowd collected to see there was nothing disorderly. I afterwards saw the officers of Syracuse that were referred to at Utica. Their names are Niess and Donovan. I knew Mr. Donovan at the time. I knew him to be a member of the police force of the City of Syracuse. I have since learned to know Mr. Niess. I now know that he was a member of the police force of the City of Syracuse at that time. It was alleged that Mrs. Guinness from Laporte, Indiana, had committed murder at Laporte, Indiana.

The Court: That is, a Mrs. Guinness had committed such a crime?

The Witness: Yes, sir.

54 Q. Now was anything said with respect to either of the women having committed that crime, or being Mrs. Guinness?

Plaintiff's Counsel: I object to it upon the ground that none of this conversation took place in the presence of either of these two ladies.

The Court: I will take it as matter of information upon which he may have acted.

A. On information that I received from the captain.

The captain told me that the supposed Mrs. Guinness was on the train. The time these instructions were given me by the night

captain was about 1:10 A. M. I got to the station about 1:30. The train on which the plaintiffs were, had not arrived when I reached there. It got there about 1:35, to the best of my recollection and I saw the train come in. I was standing then about the center of the depot under the shed. I afterwards in the station saw Mrs. Heeren and Mrs. Burton. I first saw them inside of the main waiting room seated in the first seat inside the entrance about eight or ten feet from the door; the two ladies were sitting down; the two Syracuse officers were standing up near them. I did not at that time hear any conversation between the officers and the women while I was there. This was in the large waiting room of the station. How many people were in there at that time it would be hard to estimate, my impression is that the waiting room was well crowded, seemed to be quite a crowd of people there.

By the Court:

Q. What was that crowd, usual crowd of travelers, or was it people from Utica, who had been apprised of the arrival?
55 A. My impression is that there were many people of Utica there that had been apprised of it.
Q. That the supposed Mrs. Guinness as you call her, was going to be taken off at Utica?
A. Yes, sir.

By Defendant's Counsel:

They had been there in the waiting room I should think less than five minutes, perhaps three minutes before they were taken into the small room; that was done upon the suggestion to get them out of the main room away from the curious crowd. I suggested it to the night train master, asking him if he would permit the Syracuse officers if they wanted to take them into his private office, and he said, certainly, so he spoke to them himself. He spoke to the police officers. Asked them if they would like to go into his private office to get out of the crowd, and they went in. Immediately went in without delay and they stayed in there until the train on which they were afterwards taken to Syracuse arrived. I remember that the curtains were drawn down in the small room. I drawed it. I remember that a conversation took place between either of these plaintiffs and Mr. Landers with respect to their identification. Mr. Landers had some conversation with the younger of the ladies. I couldn't state entirely, what that was because I didn't hear it all; it was in reference to a card, some lodge which her husband had belonged to; she showed him the card, representing some lodge that her husband belonged to. She also showed a bank book and showed some fraternal emblem, I believe, with her husband's name engraved on it. I can't tell why she showed them, only to prove her identity.
The Court: You are surmising?

The Witness: Yes.

56 The Court: He does not know the reason why she showed these articles to Landers, but he assumes they had to do with her identification.

I afterwards saw the plaintiffs brought from this room in which they had been back to the train. I did not go with them, only to the entrance, to clear a passageway. They walked back to the train with the two Syracuse officers, as far as I saw them go. I saw them go perhaps a distance of twenty feet from the entrance. I afterwards saw Mr. Landers in the station after the train had gone. I saw the train go out. I did not go on the train to Syracuse. Afterwards I went back to police headquarters and reported what I had done, or what I had observed.

Cross-examined by Plaintiff's Counsel:

I didn't see these ladies being taken from the train when the train arrived at Utica.

The Court: He said he first saw them in waiting room, in the large waiting room near the entrance.

The Witness: Of the approach to the waiting room.

Coming from the direction of the train. There was a large crowd on the platform outside of the station. It is a central station for railroad traffic. Trains are made up and new cars attached and they go off to different points. It is a sort of main junction of the New York Central Railroad. I did not see Mrs. Heeren faint in that station. She didn't faint in that room. I did see her give way to grief when I entered the waiting room. I saw these two police officers. They are here today. This is not one of the men here (indicating). I saw them leave the little office going

57 to the train. I say that they were in the main waiting room with a large crowd around them and two police officers near them, when I first saw them. They were very close to them, perhaps four or five feet. The ladies were sitting down, the officers were standing up. I could not say as to these ladies coming in from the train to the waiting room, that one man had hold of Mrs. Heeren, the younger lady, and another man had hold of the old lady as they were leading them in, because I was busy with the crowd. When they left the waiting room to take the train back from Syracuse I saw one officer have hold of the old lady's arm. About the other lady I wouldn't be positive about that. I saw the officers talking to Landers there in the station. I didn't hear them speaking to him about wanting their fare back to Syracuse to take these ladies back. I did not see him give them tickets to take them back to Syracuse. I heard them say they didn't have money enough to get back and would have to borrow money.

By Defendant's Counsel:

I did not afterwards see anybody give them money.

By Plaintiff's Counsel:

I heard speak of giving money to one of the officers to help take them back.

By Defendant's Counsel:

The Syracuse officers I refer to when I say they did not have money enough. I refer to the officers. Mr. Neiss told Mr. Landers he didn't have money enough to get back and he asked Mr. Landers to loan him something, but I didn't see Mr. Landers give him any.

58 By Plaintiff's Counsel:

What Landers said to him about furnishing transportation back to Syracuse I can't remember. The substance is he said he had money to loan him if he wanted to borrow it. I didn't hear the word tickets mentioned to my recollection.

O. K.
T. S.

JAMES M. RYAN, called as a witness on behalf of the defendant, being duly sworn, testified as follows:

Direct examination by Defendant's Counsel:

I lived at Syracuse, at that time, in May, 1908, and I was employed by the railroad company there. My position was assistant night station master. I was on duty the night that two police officers of Syracuse came to the station and asked about these two women, the plaintiffs, Mrs. Heeren and Mrs. Burton. I was at the door of the station master's office at the time. Detective Niess came to me. I then knew him to be a detective of Syracuse. A member of the police force of the City of Syracuse. I did not see Donovan at that time, but later in the night, towards morning I did, when he came back. When he came back on the train, that is I saw Donovan come back with Niess, having Mrs. Heeren and Mrs. Burton in their charge. I then knew Donovan to be a member of the police force of the City of Syracuse. I did not afterwards see these two officers go upon the train. I only saw Niess when he went on. I was changing engines at the head end of the train when he went on. The number of this train on which these people afterwards, these officers afterwards went was train 44. That train was not in the station at the time of that conversation with these officers. It afterwards came.

59 The Court: He said he went down to change engines at the head end. Did you see them board the train?

The Witness: I see Niess get in the sleeper, yes, sir.

Q. You went to change engines and afterwards came back to the train?

A. No. I stood at the head end of the train, I could see.

I did not afterwards go through the car and see them in the car at no time.

Cross-examined by Plaintiff's Counsel:

This train that these ladies were on that has been spoken of here, was a through express train to New York City, made up of a number

of cars. I couldn't say how many, eight or nine. They all as a rule, through trains, stop at Syracuse; that is, many trains stop at Syracuse to make up and break up and take cars to other places for their destination to New York. There were on the crew of that train engineer, fireman, conductor, two trainmen, and I think at that time they had a baggage master. In the Pullman service a Pullman conductor and there would be a porter for each car. I couldn't say how many porters there were.

Q. How many sleepers were there?

A. I couldn't say.

By Defendant's Counsel:

That train was due 12:10 in the morning. That was the night of May 9th, 1908. The train was scheduled to leave 12:15; it went at 12:15. It arrived on time and left on time.

O. K.
T. S.

60 JAMES P. COOGAN, called as a witness on behalf of the defendant, being duly sworn, testified as follows:

Direct examination by Defendant's Counsel:

I live at Syracuse. I am employed by the New York Central and still am today and was on May 8th and May 9th, 1908. My position then was night station master. I was told about the two officers who came down to the station, Officer Niess and Officer Donovan. I know them. I knew that they were members of the police force of the City of Syracuse. I had seen them make arrests on the station, about the station. I have known them to be such officers for the last ten years. I did not have a conversation with either one of them that night or the morning of May 9th, 1908, not prior to the arrival of the train. I first learned that they were there. I was in my private office and I learned what they wanted at that time. Mr. Ryan informed me that the officers wanted to see me. I did not go to see them. I afterwards went out of the office. They did not come to see me there at the office. I went out of the office and saw them after that in the Pullman car. I went into the Pullman car. When I went in there, Officers Niess and Donovan were there in that car. That is the first time I saw them that night. What I saw them do and heard them say in that car—well, the train conductor was in there, Mr. Nowlan and the Pullman conductor and two officers. When I got in the car the officers had the curtain out of the berth pulled one side and they were notifying these ladies that they would have to get up. That is about all I heard. I heard the ladies saying—they were objecting to getting up, and they wanted to know what they wanted. The ladies asked the officers what the trouble was. I think that is the remark they made; I am not sure. I can't remember what was said what they were wanted for. I
61 think they said they wanted to see them over at the office. The conductor asked me what I was going to do about it, and

one of the officers said I would have to hold the train, and I informed the conductor that I wouldn't hold the train, when the time was up we would have to start the train. So I came out and looked at my watch and had one minute before leaving time, and when the time was up the train started. The conductor came out with me. He followed me out. He gave the signal to start the train and the train immediately started out and he went back upon the car. It is true that the train went out on time, on schedule time and came in on time. I was at the station when Mrs. Heeren and Mrs. Burton were brought back and got off at Syracuse. That train was train 29, that was the number of it, due about 3:25 in the morning. That was May 9th, 1908. I did not see them get off. When they were walking down the platform at the east end of the station, that is the first I saw of them. The officers with the plaintiffs. I mean Officer Niess and Officer Donovan. They went right across the street and took a hack. I saw them get in this hack. I did not see any conductor around there that got off with them or railroad man that went along with them. The only persons whom I saw with the plaintiffs were the two officers, Niess and Donovan. And I did not see them afterwards at any time.

Cross-examined by Plaintiff's Counsel:

I have been station master at Syracuse for some years now about 32 years. My duty as station master is to fix the tide of travel of the passengers and the cars on which the passengers are to travel and to see that the trains and the passengers leave my station on schedule to their places of destination. When these two men came
62 there that night, I did not go out to speak to them before I went on the sleeper. That train had seven sleeping cars. The car in which these ladies were, I couldn't say that it was fully occupied; the berths were all made down, I couldn't tell. The conductor didn't say he wanted me to keep the train there at the station, to permit these two men to take these two ladies off. Inside the car when the detectives said, "You will have to hold the train;" the detective said to me, "You will have to hold the train," and the conductor looked at me, he stood behind me, Mr. Nowlan, I told him, I said, "When the time is up for the train to go, the train will start." Then I went out about a minute before the train started and the conductor came out leaving these two men inside of the car arguing with these two ladies in their berths and then the conductor gave the signal for the car to go. I was in the car about two minutes before I got off. What attracted my going into this car was that my attention was called to these detectives coming there to make an arrest. Mr. Ryan had told me that these men were there. They wanted to see me and I wouldn't come out of my private office, I was busy. I made an observation myself as soon as I came out. My attention was directed to this particular car where these two ladies were by seeing the gentlemen go into the car when I came out of my private office and looked up the platform, and I saw the gentlemen go into the car. To the best of my recollection this car was the second car from the head end of the engine. There is the buffet car comes first,

and then the first sleeper and then the second sleeper. I couldn't say exactly whether these ladies were in the first or second. Went in the forward end of the sleeping car. Went back from near the rear.

After they got into the car I went into it. It was a minute
63 and a half, two minutes, about two minutes. Mr. Ryan informed me that the officers were going to make an arrest. The porter was on the outside; the Pullman conductor was on the inside. That is Nowlan, the train conductor and the Pullman conductor. The colored porter stood on the outside of the car on the platform and the two conductors were quite close to these two men while Donovan and Niess were talking to these two ladies.

O. K.,
T. S.

JAMES M. RYAN, recalled, and testified as follows:

By Defendant's Counsel:

Q. Mr. Coogan testified, Mr. Ryan, that he had a conversation with you about the purpose of the officers Niess and Donovan to arrest a passenger on the train. Did you have such a conversation with these officers, and if so, will you tell what they said to you about that?

A. Niess came to the door and he said, what time does 44 get in. The officers said to me that they were to get a couple of women off No. 44, who they believed was the Mrs. Guinness from the West.

By the Court:

Q. The couple were Mrs. Guinness?
A. They believed they were.
Q. Both of them?
A. No, just one, Mrs. Guinness.
Q. They said they were after a couple of women?
A. Yes, sir.
Q. And Mrs. Guinness was one of them?
A. They believed she was; had information that she was on there.

64 By Defendant's Counsel:

They had the information she was on that train. I mean the police officers had information and I reported that to Mr. Coogan, and I immediately went out of the office to the train, to the engine. I knew these officers, Niess and Donovan. I knew them to be members of the police force of the City of Syracuse. I had seen them make arrests at the station or about the station and at other places in the City of Syracuse. I had known them ten years or over.

CHARLES NIESS, called as a witness on behalf of the defendant, being duly sworn, testified as follows:

Direct examination by Defendant's Counsel:

I live in Syracuse. My residence is tne City of Syracuse. I am a police officer of Syracuse. A member of the police department of that city, and have been such eleven years. I was such a member May 8th, and May 9th, 1908. I was on duty that night. Before the train arrived, before I went down to the station, I was on another little job near the station that night. I did receive instructions to go down to the station and take some action with respect to two passengers on train 44. I received them from Officer Hungerford. He is night officer in the captain's office. The instructions that I received were from Officer Humphrey. He said on train 44, section 1 and in berth 1, was a lady traveling with an old lady, the younger one of the two was about forty years old, had her face covered with a black veil, she was dressed in black, a large woman, measuring about six feet tall, and weighing about two hundred pounds.
65 And the other lady was an old lady, and that she was supposed to be Mrs. Guinness, the younger one of the two. I asked him where he got his information from as regards to her being Mrs. Guinness. He said he got word from police headquarters at Rochester. I went just opposite across the way over into the station and waited for the arrival of the train. With respect to Mrs. Guinness it was said was the woman that was wanted in Laporte, Indiana, as a wholesale murderess. I went down to the station alone. I was there alone, Donovan joined me later. I was there before the train came in. I told the station master Ryan what I was there for, I did have an interview with him. I asked him in regard to the train, if the train was on time, and he said it was. I told him that I had information that there were two women on that train and that one of them we wanted. I did not see Coogan that night at least before I got on the train at all. Then the train came in. Before the train came in Donovan joined me; three or four minutes before. And I and Donovan were together side by side. When the train arrived I met the train conductor. I knew he was the train conductor, could tell by the uniform, and I asked him where the car was, and he pointed out the car to me, and he walked over and he told me who the conductor was, that is, he showed me the conductor, and I showed the conductor and told him who I was, and told him what I wanted. I showed him my badge. I had on my badge at the time.

The Court: He is now talking with the Pullman conductor, not the train conductor; he showed the Pullman conductor his badge.

By Defendant's Counsel:

The official badge of my being a member of the police department I showed that to him. He called the porter and he told the
66 porter to show us where the berth was and we then entered the car. I and Donovan. The porter went with us. Those were the only persons who went with me, to my best knowledge, at

that time. At no time afterwards, did any other people, I mean a crowd of people come in the aisle of the car after I got in the car. We shook the curtain slightly where they were, and the younger one of the two asked what we wanted, and we told her we were two officers, and we wanted her to get up, and wanted to have a talk with her, and she wanted to know what was wanted. I said, you had better get up, and put your clothes on, and we will explain it to you. She kind of hesitated about getting up, finally, she stuck her head out. I asked her what her name was? She said her name was Belle Heeren. I asked her where she lived. She said at Franklin, Pa. I then asked her where she got on that train. She said at Franklin, Pa. So just then the fellow that was in the next berth said that she didn't get on at Franklin, Pa., that she got on the train at Ashtabula, Ohio. So then I asked the porter if she got on at Ashtabula, and he said yes. So by that time she was starting to dress; she got up, and her mother was awakened then, in the meantime, the woman, oh, I asked her who the other lady was that was traveling with her, and she said it was her mother. So at that the old lady, the older one of the two, she was awake and was dressing also, and she wanted to know what was wanted, and I told her that we didn't want her, that we wanted the younger one of the two, the younger one of the two that gave her name as Heeren said, mother, don't you leave me. So I told her then that we didn't want her, and she said, the elder one of the two, said well, I'll go where she goes. So about that time Mr. Coogan come in and told me that he couldn't hold the train any longer, that we would have to ride on the train to Utica, if we wanted to take them out, and the
67 train started up; and when we got down along about Oneida they were dressed so that they could leave their berths, and the Pullman conductor invited us to take the stateroom as far as Utica and ride in the stateroom to Utica. I had been on the train when it reached Oneida perhaps three-quarters of an hour. They had been in their berths dressing up to that time and they had remained in their berths up to that time. I had to pay two fares for myself and Officer Donovan. I mean from Syracuse to Utica.

By Defendant's Counsel:

I say they went to a stateroom. I went into the stateroom after they went in. I was there part of the time and Officer Donovan there part of the time. When I was there the conductor and the porter came in. That is all. When the two ladies went into the stateroom they were then dressed. They had their outer clothing all on. I believe Mrs. Heeren carried a short coat in her arm. I think she had her hat in her hand too. I think I took one piece of baggage down. I think the porter brought some down.

Q. Now, you have carried your train to Oneida, and you were then in the stateroom. Was anything said up to this time as to what they had been arrested for?

A. Well, after a while they were dressing.

Q. In the berth?

A. In the berth, I asked Mrs. Heeren, she told me her name was

Heeren, if she had any card or any papers of any kind that would identify her as Mrs. Heeren. And she said, no, that all her cards and her letters were in her trunk that was shipped ahead to New York. So after she came out of her berth she opened up a handbag and she showed me a bank book that was made to Carrie Heeren on a Chicago Savings Bank, and I asked her then how long she had been in Chicago, and she said only a short time. And
68 we then talked a little more about herself. She told me that she had just buried her husband. I asked her where, and she said Chicago. And we talked further on, and then she changed it and said she buried her husband at Franklin, Pa. That is about all the conversation we had.

I saw the regular conductor come to the plaintiffs and leave a ticket or slip with them, in the nature of a railroad ticket. I believe that was done in the stateroom. I saw the Pullman conductor deliver something to them with respect to fare, also in the stateroom. When the train arrived at Utica, the ladies they got off with us and I followed them and carried their luggage. And I first took them into the large or main waiting room at Utica, and then, upon the suggestion of Officer McMahon, took them into a smaller room; the stationmaster's room. I don't know Officer McMahon by name. He was there that night, I remember. He had a uniform on.

By the Court:

Neither one of us two officers were in uniform—neither I or Donovan—we had on citizens' dress.

By Defendant's Counsel:

We had our shields. I told these plaintiffs before they came out of their births that we were two officers.

Q. Now, where did you inform them at any time what the charge was against either one of them?

A. At the waiting room in this stationmaster's in Utica—stationmaster's office.

Q. What was the conversation that led up to that?

A. She wanted to know, she asked me several times what I wanted her for, and she wanted to know, so I thought I would explain it to her in a nice way. I told her that we had information from Rochester that she was supposed to be the Mrs. Guinness.

69 I informed her then what crime Mrs. Guinness had committed. I simply told her Mrs. Guinness was wanted for murder. And then, while I was there, I borrowed some money from Officer Landers to go back with, I didn't have enough. I asked the elder one of the two ladies what she was going to do, if she was going to pay her own fare back, and she said no, so then I had to buy a ticket for her, and I bought tickets for four; I bought them myself. I went to the ticket office, bought them in the ticket office at the station; four tickets. I borrowed one dollar from Mr. Landers. I afterwards repaid him. I don't just remember what the number

of the train was that came from the east and on which I went back to Syracuse. I should judge it was about two o'clock when we left Utica; it reached Syracuse about 3:30. I went into the day coach and the conductor came through the car and I gave him tickets for my passage from Utica to Syracuse. I handed him four tickets and those he received, he took those up, and upon them I and Officer Donovan and the two ladies rode to Syracuse. When the train stopped at Syracuse, I went back with the ladies; that is, I conducted them back. The train went on beyond Syracuse; I think it did, I didn't watch it. And it is the fact that I led them to a carriage or conducted them into a carriage, and in that carriage they were driven to the police station in Syracuse, and there took them to the Lieutenant, Charles Feiselmeyer. He was in charge, was in chief authority. I told him that these were the two women, and I guess he knew all about it. I mean he acted as if he knew all about it. Officer Donovan came over in about that time. It is the fact, that I conducted them alone to the Police Station, from the depot. I went with them alone in the carriage. Officer Donovan must have
70 walked. The Lieutenant's name is Feiselmeyer. What was done with the two women was, their names were taken and then taken upstairs in the matron's room. I went upstairs with them.

By the Court:

Q. What was the mother's name taken for, what was she taken upstairs for?

A. She volunteered to go along.

Q. You just said, here is the two women to the Lieutenant. What was she taken for?

A. She volunteered to go along.

Q. Did she volunteer to be searched?

A. All people are searched when they are brought into the station.

Q. Even when they go along as a friend?

A. Yes, sir.

By Defendant's Counsel: I say they went upstairs. I did not go upstairs with them, or Officer Donovan. I did not see them again. With respect to Mrs. Burton going with me, I did not tell her at any time that I wanted her to go along with Mrs. Heeren?

Cross-examined by Plaintiff's Counsel:

I couldn't say if these are the tickets that the conductor gave these ladies in the train.

The Court: There is no dispute about these tickets, they are admitted in evidence.

By Plaintiff's Counsel:

I have been in Brooklyn now on this trial since last Thursday. I have been staying at the Athens, 42nd Street. Not at the expense of the New York Central, as I know of. I

expect I will have to pay my bill there. I haven't paid
71 it yet. No one outside of Landers told me where to go when I came to New York. I was not acquainted here, I met Tom Landers that morning over in the Grand Central, in the defendant's railroad depot, and I asked him where he was going to stop. I did not ask Landers who was going to pay our expenses here in the city. I don't expect anybody. I am drawing my pay now as a policeman in the City of Syracuse. Prior to this occurrence, I was an acting detective at the time, and since this occurrence I have not been reduced to the grade of patrolman. I had been reduced to a patrolman just for a few days; I was reduced. We were both there. I believe Donovan did get instructions to go with me. I didn't meet him accidentally on my way to the depot; he came there, shortly after I got my orders from Hungerford. He came there after I got my orders from Hungerford. He wasn't there when I got my orders from Hungerford. Hungerford said words to the effect, "Go down to train [illegible], section 1, berth 1; there are two women there, get them; we have got word from Rochester they want them." He mentioned the berth to me and the car and the section and the train; told me there were two women there, to get them, that they were wanted, from Rochester. There isn't any dispute now about that; there can't be any possible disagreement between you and I about that at all. When I got down to the depot I met Ryan there. I didn't ask him to get Mr. Coogan. I did not see Coogan before I went on the train. I saw him on the train. Now, all I knew when I went to the depot was train 44. Train 44 was scheduled to arrive at 12:10 in Syracuse. I couldn't say how many cars that were on this train; I don't know if there were seven or eight or ten or five; I cannot give you
72 an approximate number. If the station master testified there were seven sleepers on that train, I don't know if he is correct. If there was more than one sleeping car on the train, I couldn't say; there was more than one car, I don't know whether they were all sleepers or not. I didn't pay any attention to the train whatever. I went into the car I was told car 1. The information that it was car 1, section 1, berth 1, came in the information from Rochester. I believe I did testify on my direct examination that it was car 1. I saw the train conductor on the platform before I went into the car. I asked him which was car 1. I told him what I was there for. I told him I was an officer, there was two women in that car, to tell me where they were; I told him who they were supposed to be, and that I had to "interview" them. He pointed out the Pullman conductor to me. We walked over to the Pullman conductor; he stood right there at the car. That was the car that he took me to, in which these two ladies were sleeping. Nowlan was the train conductor. Another man was the Pullman conductor in charge of the cars, of the sleeping cars. I asked Nowlan where the car was in which these two women were, and then he took me over to the Pullman conductor in charge of the car. I don't know what he said to the Pullman conductor. Then, as a result of something he said to the Pullman conductor, the Pullman conductor took me in

and told the porter to take me down to their berth. I think the train conductor, the Pullman conductor and the negro porter knew what I wanted, when I was at that car at that time; and when I got down then to the berth, I think the lights in the aisle of that car were turned low. I couldn't say whether the berth occupied by these ladies had one or two curtains to it. I had no bull'seye lantern, or Donovan; nobody had the lantern. I didn't put no light
73 in the berth. We shook the curtain a little and she woke up. I wouldn't say whether I or Donovan opened the curtain; one of the two of us did it, and the porter was there at the time. I don't know where the Pullman conductor was. Where Nowlan, the train conductor was. I don't know. I did not look around to see. I did not see Coogan on the train at that time. Our train was not going then. We were on the train before the train started on its way to New York, perhaps four or five minutes. I did hear Mr. Coogan, the station master, testify that he left the train about a minute or two before it started, and it remained in that depot five minutes; that is true. Mr. Coogan could not have been in that train at the time we woke her up; he wasn't there. I did see him just before the train pulled out. Mrs. Heeren told me her name was Heeren and that she came from Franklin, Pa. I had some conversation with her before she got out of that berth. I was there to take her out; not by force, and if she was undressed. She dressed herself. She finally got out of that berth.

Q. Now, when they got out of the berth, you remember the old lady showed either you or Donovan a letter addressed to her from her brother?

A. Mrs. Heeren showed the letter in the car right after she came out of her berth.

They finally got some clothing on in their berths. When I got down to the railroad at Utica, Donovan took hold of Mrs. Burton, walked in with her to the station, and I took Mrs. Heeren. I remember meeting Landers there that night, the railroad detective. I do remember telling him that I had not the fare to take me back to Syracuse with the party. I do not remember him telling me that he would get the tickets to go back. I didn't tell him that I had not any money and I must get back, or I expected the road
74 would help me get back. I do not remember having a talk with him about wanting him to furnish tickets for me. He finally furnished one dollar I asked him to loan me, I didn't have enough to take the whole of them back, the four; I had enough for three, but not for four. When I got to the station house with the two women, the name of this Lieutenant was Charles Fieselmeyer. I think it was raining when I got back to Syracuse; how heavy, I couldn't say.

The Court: The plaintiffs both say it was.

By Defendant's Counsel:

The train conductor I met outside on the station platform immediately after the train came in, as he was stepping off from his car.

I believe he stayed right there, stepped up onto the car. I think the porter came right out at the time, and he told the porter to show us where the berth was. I think the conductor he came back in the car right after it started; the Pullman conductor.

Q. Tell us about the train conductor?

The Court: That was Nowlan.

By Defendant's Counsel:

I know the train conductor, Nowlan. I saw Nowlan, the train conductor, first. I saw him when he stepped off the car. After he left me he went into the depot. I immediately went to car 1. After I left Mr. Nowlan I went directly into the car. That did not take long, the car was right there; we were right up at the car, and I stepped immediately into the car. Yes, the porter was ahead.

O. K.
T. S.

75 JOHN F. DONOVAN, called as a witness on behalf of the defendant, being duly sworn, testified as follows:

Direct-examination by Defendant's Counsel:

I live in Syracuse. I am a member of the police department of the City of Syracuse and have been eight years. I was a member of that department May 8th and 9th, 1908. On the night, about midnight, May 8th, 1908, I got a call to go into the office and I went over. I got a call to go into headquarters. I saw at headquarters Captain Thomas W. Quigley, night captain, and my superior at that time. He gave me such instructions then. When I went into headquarters, he told me to go over to the railroad station, that Mrs. Guinness was on the train and Niess had full instructions and her description. So I went over and got there about two or three minutes before the train came in. In the meantime, Officer Niess has seen the conductor, I guess, and we went into the train, went down to the berth, train 44, I think, section 1, or berth 1. This lady was there. I did not have what is called a bull's eye lantern with me; Officer Niess did not. I did not obtain one from anybody, or flash one into the berth in which the plaintiffs were. With respect to the plaintiff in the berth, Officer Niess asked her some questions regarding who she was. After she got out of the berth I had a conversation with them. They were in the berth, after the first questioning, I should judge, five minutes; not before they went into the stateroom. They got out of the berth, they were partly dressed, they both had clothes on. Before they went from the berth to the stateroom, it was probably twenty minutes or more, maybe more than that, I couldn't say exactly. The train might have reached Oneida, might have possibly been down there, I couldn't tell, it was dark; I didn't pay much attention.

76 I saw them go to the stateroom. Both the ladies were pretty near full dressed at that time. Now, I couldn't say I went ahead; I don't just remember what position I occupied. I

think I carried the suit case; I think I was behind both ladies too, if I am not mistaken. And they remained in the stateroom until the train reached Utica. I didn't take them off. Well, we were with them. I carried the suit case, and I had a little hand satchel, I wouldn't be sure. And I went with them into the waiting room; and they were there a few moments, and from there they were taken into the station master's office. I think it was I who suggested that—no, I don't remember who just did. I know I didn't go in there. It might have been Officer McMahon. I saw Officer McMahon there. I knew him; he was there in uniform. After they were taken into the station master's room they remained there until the next train came back, going towards Syracuse. We went out, I think, out to the train, and went into the train with them. I sat down with the eldest lady and she next to the window. I was about two seats ahead on the left-hand side of the coach going up towards Syracuse, going west. All I know about the purchasing of tickets, or the getting of tickets at Utica, to go back to Syracuse is, I didn't have enough change to bring me back at that time. I saw Officer Niess hand the conductor some tickets. I don't know anything about that incident of Officer Niess borrowing a dollar of Mr. Landers. I didn't hear any of that conversation at that time. I was not with Officer Niess when he purchased the tickets. When the train reached Syracuse, I walked with the old lady, carried the suit case. The last I saw them when they got in a hack until I walked over to the station, and there I joined them again; see them as they went in. I was not with them when they were taken
77 to the desk before the police officer at the desk; I didn't see that. I saw them just as they were going to take the elevator upstairs. I did not go up with them.

Cross-examined by Mr. Connell:

I will stand up for a moment, I weigh about 180 pounds, I guess and I weighed about that same weight at that time, my height is five feet, nine, I am forty-two years old, I consider myself in good health and was at that time (Mrs. Burton stands up), if I am five feet, nine, Mrs. Burton ought to be about five feet five, four and a half, I say that that lady is about 100 pounds. I have been in New York since Thursday, staying at the same place that Niess is staying. I don't expect that the Central Road is going to pay my expenses here, we are both strangers here, and we had to have some place and Mr. Landers recommended us over there, Landers is stopping there too; I believe Ryan is stopping there too, as to Coogan stopping there, I couldn't say McMahon is stopping there, we all eat at separate tables, any time you want to, as a rule, we have not gone around and seen the town at night all together, me and Niess have traveled a good deal together, I have seen the sights of the town in company with Niess, mileage furnished from Syracuse and back by the New York Central, just what we would get from anyone else.

I say Captain Quigley was at the desk on this night, I heard

Niess say that Lieutenant Fieselmeyer was there at the desk. Niess had his orders the same as I did from headquarters.

Q. When he got on the train Niess told you to take the old woman and he would take the young woman?

A. Nothing of the kind. We didn't want the old lady at all, we had no such orders.

78 Q. How was it you selected the elder woman and he selected the younger woman?

A. For the simple reason the old lady didn't want to be parted from her daughter, on her own statement, she said, where ever my daughter goes, I'll go.

Q. So you took her in your control?

A. Yes, sir; had to take care of the poor old lady.

Q. Being at midnight on the sleeper did you see the conductors in the train?

A. Yes, sir.

I got to Utica about 1:30 in the morning, probably, I had some money, but not enough, I can't say whether Landers gave tickets or money to Niess, only just what they told me, what I heard here yesterday, I didn't take anybody out of the car. I helped her down the steps the same as I would anybody, took her by the arm, just to help her down, and I had these grips in my hand and I was very anxious to help her down, same as any lady, she walked all alone, and I carried the grip again, I did put my hand on her, just to help her up.

By Defendant's Counsel:

I was subpœnaed from Syracuse, my subpœna was served on me by the defendant at Syracuse and the mileage and subpœna fees paid me, some man give me $24.18 mileage.

By Plaintiff's Counsel:

Since I have been down here I have been to the office of the attorneys for this railroad. I did not talk with them about what my testimony in this case should be, he asked me in regard to what happened, of course, and did not lead me all through this story, they did not tell me about this case, they did not tell me their defense of this case of the old lady was that she wanted

79 to go with her daughter; with the other witnesses, I didn't have anything to talk about, the case has nothing to do with me. I only spoke with Mr. Coogan or Ryan, Landers or Niess in regard to this case, only in a casual way, I have spoken to them since the thing happened, probably three years ago for that matter on and off, since I came down to New York last week, I haven't had any talk, I might have said a few words I could not tell you how often I did have these few words with these men since I have been down here in New York.

O. K.

T. S.

JOHN NOWLAN, called as a witness on behalf of the defendant, being duly sworn, testified as follows:

Direct examination by Defendant's Counsel:

I live at Croton, on the Hudson; I am employed by the New York Central Railroad Company, and have been for about nineteen years. On the night of May 8th, 1908, I was conductor of the train known as No. 44, on which the plaintiff, Mrs. Heeren, and her mother, Mrs. Burton were riding, I have been a conductor eighteen years and have been a conductor of train 44 five years, I took that train at Buffalo, it was a train that came from the west, from Cleveland, that train passed through Ashtabula, is the name of the railroad on which Ashtabula is, Lake Shore & Michigan Southern Railroad, that terminates at Buffalo, and there it connects with the New York Central, I took the train at Buffalo at 8:35 in the evening of May 8th, 1908, when I took that train I went through the train to collect fares, on leaving Buffalo. I recall that the plaintiffs Mrs. Heeren and Mrs. Burton were awake at that time, they had turned their tickets over to the Lake Shore conductor, and he turned them over to me and among the tickets which I took from him were the two tickets
80 entitling Mrs. Heeren and Mrs. Burton to ride on that train from Buffalo to New York, they occupied lower berth 1, in sleeping car or Pullman car No. 1 and I accepted those tickets and under those tickets they did ride from Buffalo to Utica, the train reached Syracuse on time and it left there on time, prior to the arrival of this train at Syracuse, I did not know that there was anything suspicious regarding the plaintiffs, Mrs. Heeren and Mrs. Burton. I did not know, or had not been informed that any charge of felony had been made against them before the train reached Syracuse, I did not know until I left Syracuse that either Mrs. Heeren or Mrs Burton that it had been said that she was Mrs. Guinness, of Laporte, Indiana, a murderess, not until I left Syracuse.

I had not received any directions or instructions from any superior of mine to take any action with regard to either of these plaintiffs. I was on the rear platform of the day coach next to car 1, sleeping car when the train stopped at Syracuse, I was on the rear platform of the day coach connecting with car No. 1. I met Officer Niess and Officer Donovan, when I stepped off from the step they got on to the platform at Syracuse, they were there, they asked me for car 1, and I said, this car here, he said, you have some people, you have two ladies in lower 1, car 1. After some hesitation I said, yes. He said, I want to "interview" them, and I said, what authority? And he took his shield out, and they presented the shields to me as police officers of Syracuse and I admitted them, I went from there immediately to the station and registered my train, that was the rule of the railroad, that every time I reached Syracuse, I shall register, I register the number of the train, engine, arriving time and leaving time and turned in my time slip. I registered and returned in the time slip on the second floor of the depot I
81 registered my train. I turned my time slip into the station master's office, Mr. Coogan, at Syracuse station.

The register is on the second floor, and the time slips are on the first floor, then I returned to my engine and compared time with my engineer, and returned to car 1. We generally used about three minutes in doing these things. I occupied about three minutes that night in doing these various things and then I entered into car 1, in that car when I got there there was the two officers, porter and station agent, Coogan, after I got back to the car, Mr. Coogan said that they wanted him to hold the train, but he wouldn't hold it, and directed me to start on time, and followed me out of the car, after that conversation we went out on the platform and started the train. I just walked to where they were, returned right back again on his direction, possibly forty-five seconds and then I went on upon the platform and started, gave the signal to the engineer to start the train and the train started on time, afterwards I went directly to that car 1 after passing through my day coach, the Pullman car was next to the day car.

Q. How long were the plaintiffs in that berth 1 before they were taken into the stateroom?

A. Well, when I returned to the car they were dressing and I stepped on past them collecting the two officers' fares to Utica, and then I passed through to the smoking room and the officers followed me into the smoking room, to give the ladies a chance to dress. They dressed behind the curtain in the usual form that all passenbers dress, and after a respectful time we returned to the aisle, and as they were up I directed the porter to open the stateroom and light it for their convenience.

82 Then they went to the stateroom, I am not quite sure whether the officer was ahead or the porter in conducting the ladies to the stateroom, their luggage was taken there, I couldn't say who carried it in.

Q. Now, do you recall, conductor, how long after the train left Syracuse that they were taken into the stateroom?

A. It was in the vicinity of Oneida, twenty-six miles east of Syracuse, which would be about forty-five minutes' run, forty or forty-five minutes the distance from Buffalo to Syracuse is 149 miles, the running time is three hours and a half, the distance from Syracuse to Utica is fifty-four miles, and the running time to that place is one hour, fifteen minutes, my train was not scheduled to stop at any time between Syracuse and Utica; Utica was the first stop and there my train did stop.

I went into the stateroom after the plaintiffs went in there, I went to the stateroom about forty-five minutes to an hour after they had entered or after they had left their berth, and asked them if they were going to leave the train at Utica, and the younger lady said that she supposed they had to, and I said to them that I would give them a rebate then for the two fares from Utica to New York. Those are the two rebates (Plaintiffs' Exhibits A and B) are the ones I gave them, this Plaintiff's Exhibit C is a draw back, on from berth No. 1 from Utica to New York in connection with their re-

bate on their railroad tickets, that is issued by the Pullman Company, I saw the Pullman conductor give that. Exhibits A and B are rebates that is issued for the purpose of taking up the full ticket leaving the passenger without any fare and to continue their journey, we issue that rebate for them to redeem at the terminal station any time at their convenience, redeem it in money, it isn't given for a ride, they can redeem it at the terminal, New York City. When the train reached Utica, I saw the plaintiffs get off, the officers got up and took their luggage and walked ahead, the ladies fol-
83 lowed them close, possibly two or three or five feet behind them; when they alighted from the train the officers assisted them off the car. I have no knowledge that Mrs. Heeren asked me to interfere in their behalf, and I answering that I thought they had better go with the officers, I do not recall anything of that kind being said.

Q. With respect to your conversation with the officers at Syracuse, did they say anything to you as to what the charge was against this Mrs. Guinness, or the two passengers, or either of the passengers?

A. I believe they mentioned something to that effect, but I couldn't say where it was.

Q. I mean did they say anything to you to indicate what the charge was against one or both of these passengers occupying berth 1?

A. They said to me that they were looking for two women from Indiana, I don't know that they mentioned Mrs. Guinness, I couldn't say.

By the Court:

Q. Did they state what the crime was for which they were trying to arrest the passengers?

A. I don't know whether they mentioned that at Syracuse.

Q. Did they anywhere along there?

A. I think after leaving Syracuse they told me that between Syracuse and Utica.

Q. What did they say then?

A. They said, Mrs. Guinness, the murderess at Indiana, this was supposed to be the murderess, Mrs. Guinness, of Indiana, and they were going to take her, that is about all; that is about all the conversation we had.

Cross-examined by Plaintiff's Counsel:

When these men came to me at the depot at Syracuse, all
84 my passengers were asleep in the cars, the train solidly made up to go to New York direct stopping only at Utica, Albany and Poughkeepsie, these men came to me on the platform at Syracuse station, outside of the day coach and car 1, they said they wanted lower 1, car 1, for an "interview" with two ladies in that berth, I showed them where car 1 was. I directed the porter to go in with them and show them berth 1. I know the man who is a Pullman conductor named Britton; I know him as a tripper, but

don't know the man to be familiar with him, that was the name of the Pullman conductor that night. I saw him issue this ticket, Plaintiff's Exhibit C; he gave her this ticket at the same time that I gave my ticket.

Q. You say that these men and the porter were in this car for a period of forty-five minutes before they finally had their clothing on and came out of the stateroom, or were ready in the stateroom to go off at Utica?

A. Their "interview" at Syracuse consumed a little time.

Q. What do you call a little time?

A. Possibly five or ten minutes.

Q. At their berth, do you mean?

A. At their berth.

Q. And the rest of the time that you spoke of was spent in the aisle by these ladies and these men?

A. During the time we stayed at Syracuse the time was five minutes there.

Q. You just said, Mr. Nowlan, that the interview of these men with these ladies at their berth took five minutes?

A. Possibly about five minutes, yes, sir.

Q. How long did the interview in the aisle of the car last before they were taken to the stateroom?

A. Possibly somewhere around ten or fifteen minutes.

Q. In addition to the other five minutes?

A. No, ten minutes with that, I should think.

Q. Do I understand you to say that these ladies were taken into the smoking room before they were taken into the stateroom?

A. No, sir.

85 Q. Then I understand you to say that the officers retired to the smoking room behind the curtains, and these ladies were in the stateroom?

A. The ladies were in their berths dressing, and the officers went in the smoking room with me while they were dressing.

Q. Now, let us get that right please, so there won't be any confusion about this. Did these men go away from the berth of these woman before they were taken out of that berth?

A. They did.

Q. Did you hear the testimony of Niess and of this other policeman yesterday?

A. I think I heard it.

Q. Did you hear the testimony of Officer Niess and Officer Donovan?

A. I did; yes, sir.

Q. To the effect that they were at that berth while these women were taken out of there. Did you hear that?

A. I didn't hear that part.

Q. You didn't hear that?

A. No, sir.

Q. You knew then when these men took these women to this stateroom that they were going to take them off the train at Utica?

A. Yes, sir.

Q. You knew that as matter of fact?
A. Yes, sir.
Q. And your giving them these rebate checks was not because they asked you for them?
A. No, sir.
Q. Or not because they asked for permission to go off that train, but because of the fact that you had knowledge that they were going to be taken off?
A. Yes, sir.
Q. These tickets would not have taken them even from Utica to New York as they stood—yes or no, please?
A. No.

Plaintiff's counsel reads ticket as follows: "Why issued." Officer took passenger off. And then it says, "At Utica."
Defendant rests.

O. K.
T. S.

86 *Motion to Dismiss.*

Defendant's Counsel: I move to dismiss the complaint upon the following grounds:
First. That the evidence fails to show what defendant omitted to exercise towards the plaintiff any duty of protection which it was under obligation to exercise towards her as a passenger.
Second. That the evidence discloses that the plaintiff was arrested by these officers for felony, which they believed had been committed by her.
Third. That in the arrest of the plaintiff by the peace officers they were as to the defendant's conductor acting upon apparent and regular authority of law.
Fourth. That it was not the duty of defendant's conductor to question the apparently regular authority of the peace officers, or to oppose or physically resist their purpose to arrest the plaintiff while a passenger.
These motions apply to both cases, your Honor.
Plaintiff's Counsel: Where is there any charge of crime against Mrs. Burton?
The Court: True, there is no charge of crime against Mrs. Burton here. But these acts complained of were not done by the defendant Railroad Company but by men over whom the Railroad Company had no control. When these two officers informed the employees of the railroad of the nature of their errand, I do not think it was incumbent upon the railroad employees to resist or interfere with them. This entire transaction cannot be too severely criticised. The question here is: Is it the duty of a common carrier to interfere and prevent the arrest of passengers by police officers when the latter charge them with crime? If so, then a railroad train
87 becomes immediately a criminal's haven of immunity from apprehension and a refuge to which one accused of crime may resort with impunity and entire safety.

A felon may get on a train in New York City, or even an innocent man accused of felony, and if you are right in your contention then once he is on the train bound for say Montreal he cannot be taken from the train enroute by the police officers of Albany or any city on the line, and the Railroad Company could stand guard over their train, and say we have contracted to carry this passenger to Montreal and we are going to carry him, law or no law. Now the misfortune here is, because it is a great misfortune to these ladies, that public policy requires, it seems to me, however harsh that policy in this case, and however outrageous all the acts may have been, that the officers of the law must be permitted, as far as any act of the railroad is concerned, by way of resistance, to board their train en route and take one from that train whom they accuse of crime. The remedy here is against the Syracuse policeman and against the Rochester officials who with extraordinary zeal telegraphed the Syracuse police to stop train 44, and go to berth so and so for an alleged Mrs. Guinness. There is the remedy. Take the hotel proprietor who has guests in his house. He owes them a certain degree of care and duty, rather more than ordinary, and if officers of the law come to him and say, "You harbor here a criminal," is he going to say, "Until I give him his breakfast and give him the attention he has paid for as a guest, I won't permit you in my house and you must wait until I turn him out on the street before you arrest him." That is not possible, because if it were so, as I said before, you grow up and create havens of refuge for criminals.

Now I do not think here that this defendant is liable, because
88 these officers were known to the railroad employees to be such, and the railroad employees had a right to assume that these officers were acting in pursuance of their duty. I do not think the railroad is bound to inquire even into the nature of the offense or to inquire into their authority. The railroad company's employees did not instigate this arrest, nor do anything to encourage it. On the contrary, the station master at Syracuse, Mr. Coogan, declined to hold the train, but directed it to start on time, and these unfortunate ladies were taken off at Utica, the officers going on with them. In view of the circumstances in this case I cannot see the liability of the Railroad Company, much as I wish I could, as a matter of humanity. But as a matter of public policy, as a matter of the greatest good to the greatest number, and as a matter of general public security, all of these graver considerations would seem to me to intervene between you and the right of action and requires me to dispose of this case as a matter of law.

Plaintiff's Counsel: It is conceded that as to Mrs. Burton no crime was charged.

The Court: The same rule applies to Mrs. Burton. Do not lose sight of the point that these officers were men over whom the railroad had no control. They were officers of the law, they were not strangers. The instant these men came on board the train they occupied a relation wholly independent of the railroad. Hutchinsons on Carriers in the 2nd Volume, Section 987, lays down the rule which I think is the approved rule and must be applied to this case.

It says: "The carrier is not required to resist an officer of the law who has apparent authority to arrest a passenger, nor is he under any duty to inquire into the legality of the arrest, or to see that the officer uses only such force as is necessary to make the arrest. If he has notice that the arrest is wrongful, it would be his duty to
89 make inquiry into the matter, and if justified to interfere; but where the arrest is by officers of the law and is apparently regular and there is nothing to put the carrier on notice that the arrest is illegal, the carrier will not be bound to interfere with the officer and prevent the arrest, having a right to presume that the arrest is legal, that he is obeying his commanding officer, and that there is no breach of duty to the passenger.' Your only proposition here is that there was no extradition warrant. I cannot admit that this other peril, the graver peril of the injustice of creating a haven or refuge for criminals does not offset the proposition that there was no warrant. People accused of crime must be apprehended in the public interests; and a railroad train cannot be used as a shield against that apprehension. It is every day practice in police channels to telegraph to distant points in other states to make an arrest and hold the prisoner to await the arrival of the police and an extradition warrant. I thing that any police officer would have a right, having reasonable ground to believe that a criminal was in his presence, to hold him to await extradition papers. He takes a risk himself when he does it. He takes the risk of being subject to a suit for damages for false imprisonment if he has made a mistake. If he did not proceed reasonably all those things are at his peril. The right of arrest by officers of the law known to the railroad company to be such officers cannot be interfered with in my opinion by the railroad.

Plaintiff's Counsel: It is conceded that there was no charge existing against Mrs. Burton of any kind even by the officers themselves, and their own testimony was that they did not go for the purpose of taking her.

The Court: They had no valid charge, I will assume,
90 against either lady. I will even assume that there never was such a case as the Guinness case. I will assume that the officers with the utmost of malice designedly and wickedly said let us go down on the train and pull somebody off, I cannot see where the railroad company would be liable for the acts of the policemen claiming to be such and so known, in fact, to the railroad employees.

Plaintiff's Counsel: Suppose these policemen went to this station at this hour at this night and said, we want every passenger on your sleeping cars, we have not any warrant for them at all.

The Court: I do not think it is essential to suggest so extreme a case as the arrest of the entire train. The question here is what did the railroad officials know regarding these officers.

Plaintiff's Counsel: I move your Honor to be permitted to go to the jury in both cases upon the questions here.

The Court: I am inclined to help you. The question I think is new in this state. I am inclined to let you go to the Appellate Division, in the first instance.

Defendant's Counsel: I have no objection, your Honor.

The Court: I will direct exceptions to be heard at the Appellate Division in the first instance, and I dismiss the complaint with such direction.

Plaintiff's Counsel: I ask to go to the jury in both cases on all the issues, on the minutes and the evidence and so forth. I also make the usual motions for a new trial which I take it for granted you will deny.

The Court: Yes. Enter the usual orders to have these cases heard by the Appellate Division on exceptions in the first instance. That is the disposition I make of both of these cases.

Plaintiff's Counsel: I ask to amend the complaints by alleg-
91 ing in it that the arrest, ejectment and removal of these passengers was in violation of the Constitution of the United States.

Defendant's Counsel: I have no objection.

The Court: Yes, you may incorporate in the complaints the amendment alleging that the arrest of these plaintiffs, both plaintiffs, and removal from the train was in violation of the Constitution of the United States.

The foregoing contains all the evidence given upon the trial of this action.

O. K.
T. S.

EXHIBIT A.

This certifies that passenger named in conductor's portion of this check, held ticket of form, number and destination as noted, and left train at station indicated thereon.

J. F. FAIRBANK,
General Passenger Agent,
Grand Central Station, New York.

Form T I C No. 16778.

O. K.
T. S.

EXHIBIT B.

This certifies that passenger named in conductor's portion of this check, held ticket of form, number and destination as noted, and left train at station indicated thereon.

J. F. FAIRBANK,
General Passenger Agent,
Grand Central Station, New York.

Form T I C No. 16779.

O. K.
T. S.

92 EXHIBIT C.

The Pullman Company.

Transfer Check.

28451.

Car Brahonito Line 1505.
Passage Taken 5-8 1908 6:10 P. M.
En Route from Erie Pa.
To New York.
Transferred or Cut-off at Utica.
Date 5-9 1908 1:40 A. M.
Why issued Officer Snook Passenger Agt.

Berths:

Upper	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16
Lower		2	3	4	5	6	7	8	9	10	11	12	13	14	15	16

O. B. Breton,
Conductor.

This check is issued on account of:
1st Class Ticket Cash fare Trip pass.
o 2nd Class o o
D. R. Compart'nt U in Comp o No persons.
seat
o o L in Comp 1 3

O. K.
T. S.

93 *Stipulation Between Attorneys.*

Supreme Court, Kings County.

LUCINDA BURTON, Plaintiff,
against
THE NEW YORK CENTRAL AND HUDSON RIVER RAILROAD COMPANY,
Defendant.

It is hereby stipulated and agreed by and between the parties hereto that the exceptions in both of the above cases be heard together and that only one printed record of both cases be made, served and filed and the same to apply to both cases.

Dated, April 3rd, 1911.

WILLIAM F. CONNELL,
Attorney for Plaintiffs.
ALEX. S. LYMAN,
Attorney for Defendant.

O. K.
T. S.

Stipulation Settling Case.

It is hereby stipulated that the foregoing case contains all the evidence given upon the trial of this action and that the same be settled and ordered to be filed and annexed to the judgment roll herein.

Dated, May 17th, 1911.

WILLIAM F. CONNELL,
Attorney for Plaintiffs.
ALEX. S. LYMAN,
Attorney for Defendant.

O. K.
T. S.

94 *Order Settling Case.*

On the above stipulation the foregoing case on appeal, containing all the evidence is hereby settled and ordered on file.

Dated, May 17th, 1911.

ISAAC M. KAPPER, *J. S. C.*

O. K.
T. S.

Stipulation Waiving Certification.

Pursuant to Section 3301 of the Code of Civil Procedure, it is hereby stipulated that the foregoing consists of true and correct copies of the notice of appeal, judgment roll and case and exceptions as settled, and the whole thereof now on file in the office of the Clerk of Kings County; and certification thereof by the Clerk, pursuant to Section 1353 of the Code of Civil Procedure is hereby waived.

Dated, May 17th, 1911.

WILLIAM F. CONNELL,
Attorney for Plaintiffs.
ALEX. S. LYMAN,
Attorney for Defendant.

O. K.
T. S.

95 *Affidavit of No Opinion.*

Supreme Court, Kings County.

LUCINDA BURTON, Plaintiff,
against
THE NEW YORK CENTRAL AND HUDSON RIVER RAILROAD COMPANY,
Defendant.

CITY AND STATE OF NEW YORK,
County of Kings, ss:

William F. Connell, being duly sworn, says that he is the attorney for the plaintiffs herein and that no opinion in writing or other-

wise, was rendered by the Court herein, other than as stated at pages 94-98 of the printed case herein and which was rendered at the close of the trial upon the motions made to dismiss the complaint.

WILLIAM F. CONNELL.

Sworn to before me this 31st day of March, 1911.

THEO. M. LE BEAU,
Notary Public, Kings Co.

O. K. T. S.

96 *Order Filing Record in Appellate Division.*

Pursuant to Section 1353 of the Code of Civil Procedure, it is

Ordered, that the foregoing printed record be filed in the office of the Clerk of the Appellate Division of the Supreme Court in the Second Judicial Department.

Dated, May 17th, 1911.

ISAAC M. KAPPER, *J. S. C.*

O. K. T. S.

97 *Order of Affirmance on Exceptions to be Heard in the First Instance.*

At a Term of the Appellate Division of the Supreme Court Held in and for the Second Judicial Department at the Borough of Brooklyn on the 15th Day of December, 1911.

Present: Hon. Almet F. Jenks,
Presiding Justice.
" " Edward B. Thomas,
" " William J. Carr,
" " John Woodward,
" " Adelbert P. Rich,
Justices.

LUCINDA BURTON, Plaintiff,
vs.
NEW YORK CENTRAL AND HUDSON RIVER RAILROAD COMPANY,
Defendant.

This cause having come on to be heard at a Trial Term of this Court held at the Court House in Kings County on the 27th and 28th days of February, 1911, and the complaint having been dismissed and the plaintiff's motion for a new trial having been denied and the Court having ordered that the plaintiff's exceptions be heard in the first instance by the Appellate Division of this Court and that judgment be suspended in the meantime. And the cause having been argued by Mr. Wm. F. Connell of counsel for the plaintiff

and by Mr. Robert A. Kutschbock of counsel for the defendant and due deliberation having been had thereon,

98 It is hereby ordered and adjudged that the exceptions be overruled and judgment directed for the defendant with costs. Opinion by Woodward, J., Jenks, P. J., concur-. Car, J., concurs in separate memorandum. Thomas, J., reads for plaintiff.

Enter:

ALMET F. JENKS, *P. J.*

O. K. T. S.

Judgment of Affirmance.

Supreme Court, Kings County.

LUCINDA BURTON, Plaintiff,
against
THE NEW YORK CENTRAL AND HUDSON RIVER RAILROAD COMPANY,
Defendant.

Judgment Entered January 24, 1912.

This cause having come on to be heard at a Trial Term of this Court, held at the County Court House in the County of Kings on the 27th and 28th days of February, 1911, before Honorable Isaac M. Kapper, Justice, and a jury, and the testimony of the respective parties having been heard and the complaint having been dismissed at the end of the entire case, and the plaintiff's motion for a new trial having been denied, and the Court having ordered that

99 the plaintiff's exceptions be heard in the first instance by the Appellate Division for the Second Judicial Department, and that judgment be suspended in the meantime, and said exceptions having been argued in the said Appellate Division, and the said Appellate Division having on the 15th day of December, 1911, entered an order overruling the said exceptions of the plaintiff, and directing judgment for the defendant, with costs, and the remittitur of the Appellate Division having been duly filed in the office of the Clerk of the County of Kings on the 15th day of December, 1911, and the costs of the defendant herein having on the 15th day of January, 1912, been taxed at the sum of Two hundred dollars and seventy-four cents ($200.74), it is hereby

Adjudged, that the complaint of the plaintiff, Lucinda Burton, herein be dismissed, and that the defendant, The New York Central and Hudson River Railroad Company, recover of the plaintiff the sum of Two hundred dollars and seventy-four cents ($200.74) costs, taxed as aforesaid, and have execution therefor.

CHAS. S. DEVOY, *Clerk.*

O. K. T. S.

100 *Notice of Appeal to Court of Appeals from Order.*

Supreme Court, Kings County.

LUCINDA BURTON, Plaintiff,
against
NEW YORK CENTRAL AND HUDSON RIVER RAILROAD COMPANY,
Defendant.

SIRS: Please take notice that the plaintiff-appellant, Lucinda Burton, hereby appeals to the Court of Appeals of the State of New York from the order of the Appellate Division of the Supreme Court, Second Department entered December 15th, 1911, and from the judgment entered thereon or hereafter to be entered thereon in the office of the Clerk of Kings County overruling and denying plaintiff's exceptions upon denial of plaintiff's motion to go to the jury upon the issues, also upon denial of plaintiff's motions for a new trial.

Dated, January 2nd, 1912.

WILLIAM F. CONNELL,
Attorney for Plaintiff-Appellant, Lucinda Burton.

Office and Post Office Address, 16 Court Street, Borough of Brooklyn, City of New York.

To Alexander S. Lyman, Esq., Attorney for Defendant-Respondent; Charles S. Devoy, Esq., Clerk of Kings County; John B. Byrne, Esq., Clerk of Appellate Division, Supreme Court, Second Department.

O. K. T. S.

101 *Notice of Appeal to Court of Appeals from Order and Judgment.*

Supreme Court, Kings County.

LUCINDA BURTON, Plaintiff,
against
NEW YORK CENTRAL AND HUDSON RIVER RAILROAD COMPANY,
Defendant.

SIRS: Please take notice that the plaintiff-appellant, Lucinda Burton hereby appeals to the Court of Appeals of the State of New York from the order of the Appellate Division of the Supreme Court, Second Department, entered December 15th, 1911, overruling and denying plaintiff's exceptions upon denial of plaintiff's motion to go to the jury upon the issues, also upon denial of plaintiff's motions for a new trial, and from the judgment entered thereon in the

office of the Clerk of Kings County January 24th, 1912, and from each and every part thereof.

Dated, January 29th, 1912.

WILLIAM F. CONNELL,
Attorney for Plaintiff-Appellant, Lucinda Burton.

Office and Post Office Address, 16 Court Street, Borough of Brooklyn, City of New York.

To Alexander S. Lyman, Esq., Attorney for Defendant-Respondent; Charles S. Devoy, Esq., Clerk of Kings County; John B. Byrne, Esq., Clerk of Appellate Division, Supreme Court, Second Department.

O. K. T. S.

102 *Prevailing Opinion by Mr. Justice Woodward.*

Supreme Court, Appellate Division, Second Judicial Department.

Jenks, P. J.; Thomas, Carr, Woodward, and Rich, JJ.

LUCINDA BURTON, Plaintiff,
against
NEW YORK CENTRAL AND HUDSON RIVER RAILROAD COMPANY,
Defendant.

Exceptions to be Heard in the First Instance upon Denial of Plaintiffs' Motions to go to the Jury upon the Issue and upon Denial of Plaintiffs' Motions for a New Trial.

William F. Connell, for the plaintiffs.
Robert A. Kutschbock, for the defendant.

WOODWARD, *J.*:

The facts in the above cases are practically identical, and they were tried together. There is no dispute about the material facts. The plaintiffs, mother and daughter, residents of Franklin, Pennsylvania, purchased tickets from the defendant at that point, entitling them to passage from Franklin to New York City, by way of Ashtabula, the Lake Shore & Michiban Southern and the
103 New York Central & Hudson River Railroads, on the 8th day of May, 1908. While passengers upon the defendant's train, and at or near Erie, Pennsylvania, the plaintiffs purchased sleeping car berth No. 1, and when the train reached Erie at about ten o'clock they retired to their compartment, disrobed and went to sleep. The train reached Syracuse at midnight, and during the ten minutes that the train remained at the station two police officers entered the car, demanding of the conductor that they be directed to berth No. 1, for the purpose of interviewing the two women who were occupying the berth, alleging that one of them was believed to

be Mrs. Guinness of Laporte, Indiana, who was at that time alleged to have been implicated in a series of atrocious murders. The defendant's conductor asked for the authority of these officers, and was told that they were police officers, they at the same time displaying their badges, and upon this assurance the officers were conducted to the compartment where the plaintiffs were sleeping. The officers opened the curtains and had some conversation with the plaintiffs, the latter demanding to know why they were thus disturbed, and the officers told them that they were wanted and commanding them to get up and leave the train, threatening to take them out without an opportunity for dressing. The plaintiffs got up and after putting on a portion of their clothes were permitted by the defendant's conductor to go into the stateroom, where they finished dressing in the presence of one of the officers, the train in the meantime having left the Syracuse station on time. The officers paid their fare to Utica, and defendant's conductor gave the plaintiffs a receipt entitling them to recover the amount of the unused portion of their tickets and advised the plaintiffs to leave the train with the officers without trouble, and this they did at Utica, from whence they
104 returned to Syracuse upon a later train, the officers paying the return fares. At Syracuse the plaintiffs were taken to police headquatrers, where they were given over to the matron, and by her stripped and searched, and finally at about four o'clock of the following day they were permitted to resume their journey to New York, it being ascertained that they were not the persons whom the officers were looking for.

This action is brought, not against the officers, but against the defendant railroad company, upon the theory that it was the duty of the defendant to perform its contract of carriage, and to protect the plaintiffs against the indignities and the humiliations to which they were subjected by the officers. The case is peculiarly aggravating; from the evidence it appears that these women, having no connection with the Indiana or any other crime, were treated with great brutality by the officers, who apparently felt that they had a license to forget all that belongs to their office as peace conservers, and to bully these two defenseless women, whom they had been told by telegraph from Rochester were identified with the Indiana crimes, and it would be worth while to deal with them as the facts seem to warrant, but that case is not here for determination; the question here is as to the duty of the defendant in the premises.

The plaintiffs urge that the right to arrest, in this state, the citizens of another state, for a crime committed against the laws of that other state, is wholly regulated by the constitution of the United States and the Act of Congress of 1793, and that this state has no authority to cause the arrest of such citizens without first complying with the requirements of the United States constitution, for this state does not possess by comity, or otherwise, the right to detain or arrest the citizen of another state. The plaintiff
105 cites many authorities for this proposition, but none of them, we apprehend, goes to the extent of holding that a citizen of a sister state may not be arrested in this state for a crime committed

in such sister state until all of the steps have been taken which would justify the rendition of such person. As well say that a man might not be arrested in this state for murder until he has been formerly charged with crime by a grand jury. The definition of "arrest" as given by the Code of Criminal Procedure (§167) "is the taking of a person into custody that he may be held to answer for a crime," and as it is made the duty of the executive authority of the state, under given conditions, to surrender persons charged with crime in sister states, we apprehend that the arrest of persons believed to have been guilty of crimes in other states, that they "may be held to answer for a crime" is governed by the same rules which apply to citizens of this state within our own jurisdiction. This is in harmony with that provision of the Constitution of the United States which provides that the "citizens of each state shall be entitled to all privileges and immunities of citizens in the several states," as construed by the court in Kemmish v. Ball (129 U. S., 217, 222), where the court say that "the clause of the Constitution declaring that the citizens of each state shall be entitled to all privileges and immunities of citizens in the several states does not give non-resident citizens of Iowa any greater privileges and immunities in that state than her own citizens there enjoy."

If we are right in this proposition, we are to view the acts of the defendant in the present cases in exactly the same light that we would view the question if the plaintiffs had been citizens of the State of New York and residing here. That is all that can be fairly asked, that citizens of other states, within our jurisdiction,
106 be treated in the same manner that we treat our own citizens.

Section 169 of the Code of Criminal Procedure provides that if "the crime charged be a felony, the arrest may be made on any day, and at any time of the day or during any night," and in the case now under consideration the crime was murder, so that the particular time of the arrest is of no consequence. Section 177 of the Code of Criminal Procedure provides that a "peace officer may, without a warrant, arrest a person: 1. For a crime, committed or attempted in his presence; 2. When the person arrested has committed a felony, although not in his presence; 3. When a felony has in fact been committed, and he has reasonable cause for believing the person to be arrested to have committed it." Section 179 further provides that a peace officer, "may also, at night, without a warrant, arrest any person whom he has reasonable cause for believing to have committed a felony, and is justified in making the arrest, though it afterward appear that a felony had been committed, but that the person arrested did not commit it." Section 178 of the Code of Criminal Procedure likewise provides that "To make an arrest, as provided in the last section, the officer may break open an outer or inner door or window of a building, if, after notice of his office and purpose, he be refused admittance."

It thus appears that, in so far at least as citizens of this state are concerned in the commission of a crime within this jurisdiction, the peace officers of the City of Syracuse would have been justified in making the arrest which was made, upon the information by

telegraph from the police department of the City of Rochester that a felony had been committed and that a person answering the description of the person suspected of the crime was upon the defendant's train in a particular berth, and this was the rule of the common law. (Burns v. Erben, 40 N. Y., 463, 466, and authorities there cited; Kurtz v. Moffit, 115 U. S., 487, 504 and au-
107 thorities there cited.) Being authorized to make the arrest, the peace officers would have been justified in using any force necessary to this end, and the agents and servants of the defendant would have been acting contrary to law if they had refused to permit the arrest to be made. The peace officers, acting within their authority, superseded the authority of the conductor and servants of the defendant in charge of the train; the plaintiffs, by operation of law, were transferred to the custody of the policemen, and the train officials ceased to have any control over them, and the defendant could not, therefore, be held liable for any of the indignities suffered by the plaintiffs. This was practically decided in the case of Newman v. The New York, Lake Erie & Western R. R. Co., (54 Hun., 335), where a railroad detective arrested a suspicious character who had purchased a ticket and was waiting for the departure of a train. The prisoner was taken before a police magistrate and held, and the court held that the arrest might be justified under the circumstances disclosed by the evidence, and that the detention by the police magistrate could not involve the defendant in damages, even though the peace officer making the arrest was in its employ, so long as it was not shown that the prisoner was detained at the instance of the officer.

The presumption prevails that the common law exists in each one of the states (Newman v. N. Y., L. E. & W. R. R. Co., supra), and at common law a felony has a well known and definite meaning. It is an offense which occasions a total forfeiture of lands or goods, or both; to which capital or other punishment might be superadded (Fassett v. Smith, 23 N. Y., 252, 257), and it cannot be doubted that murder is a felony both under our own statutes and at common law. (See The People v. Lyon, 99 N. Y., 210, 216; §2 The
108 Penal Law.) Our statute does not require that the felony shall have been committed within this state, nor does the common law. The authority to arrest without a warrant is general in a peace officer "When a felony has in fact been committed, and he has reasonable cause for believing the person to be arrested to have committed it" (§177 Code of Criminal Procedure), and people coming within this state have no right to complain if they are treated in the same manner that our own people are treated under the law. In the case now before us the defendant railroad company took on passengers and undertook to carry them, subject to the laws of this state, to their destination. At Syracuse peace officers, acting under the law, came on board and interrupted the defendant in the performance of its contract, and it cannot, we believe, be held answerable to the plaintiffs in this action. It is not material even that there may have been no felony; the peace officers had apparent authority to make the arrest. It was a matter

of common notoriety that a series of murders had been committed in the State of Indiana, and the perpetrator of these crimes was believed to be Mrs. Guinness. These peace officers told the defendant's conductor that they were after Mrs. Guinness, who was believed to be on car one and in berth one, according to information received from the police department of Rochester, and the conduct of the conductor and other members of the train crew was in accordance with the law, and involved no liability to the plaintiffs. This view is supported by Owens v. Wilmington & Weldon R. R. Co., (126 N. C., 139), Brunswick Western R. R. Co. v. Ponder, (117 Ga., 63), Texas Midland R. R. v. D. Dean (98, Texas, 517), Bowden v. Atlantic Coast Line, (144 N. C., 28), and by reason and sound public policy.

Judgment for the defendant should be entered.

O. K.
T. S.

109 *Concurring Opinion by Mr. Justice Carr.*

BURTON
v.
N. Y. C. & H. R. R. R. Co.

CARR, *J.:*

I concur in the result for affirmance. I do not think it necessary to decide whether the police officers had legal power to make the arrest in question. They were known to be police officers, and I think it should have been presumed, prima facie, by the train officers, that the policemen were acting lawfully. If so, then there was no breach of duty by the defendant to its passengers in failing to resist the attempted arrest. Doubtless if the conductor had inquired he would have learned that the police officers were acting without a warrant issued either by the Governor or a magistrate under the provisions of Sections 827-829 of the Code of Criminal Procedure. If such information had been before him, as it was not, he was not then obliged to determine, at the risk of his employer, a question of law as to which the Justices of this court are not in complete harmony. I do not find in this record any proof of such participation in the arrest by the conductor as to make him one of several joint tort feasors. If there was such proof, then the question of the defendant's liability would have been for the jury to determine. (Duggan v. B. & O. R. R., 159 Pa., 248; Mayfield v. St. Louis R. R. Co., 133 S. W., 168.)

O. K.
T. S.

110 *Dissenting Opinion by Mr. Justice Thomas.*

BURTON
v.
NEW YORK CENTRAL & H. R. R. R. CO.

THOMAS, *J.* (Dissenting):

The question is whether there was such evidence of defendant's neglect to protect the plaintiffs, its passengers, from an unwarranted assault or participation therein as to require submission of defendant's liability to the jury. The seizure of two female passengers at Syracuse by two policemen was followed by holding them while the train proceeded to Utica, whence they were removed from the train and later returned to Syracuse, where they were later released. The policemen acted pursuant to a message from police headquarters at Rochester to the effect that there were two women on the train, the younger of whom was supposed to be Mrs. Guinness, who had committed murders in Indiana.

There was no basis whatever for the advice. There is not a fact that palliates the officers' conduct, nor one that shows the slightest effort on the part of the defendant's station agents at Syracuse, or the conductor, to discover the truth and to avert the indignity. Moreover, the station agent and the conductor countenanced by their presence the seizure of the plaintiffs, and in addition the conductor either led, or directed that the officers should be led, to the plaintiffs' berth, thereby identifying the passengers, and Mrs. Heeren testified that after they had been compelled to vacate the berths she said to the conductor, "I am not the woman that is wanted, can't
111 you do something for me?" I said, "I am not the one, there is a mistake here," and he said, "You had better go along without any trouble." I partly dressed the both of us, and the two men and the conductors of the train took us to the stateroom. Mrs. Burton also testifies that in the stateroom the two conductors and porter were present for a part of the time while they were dressing. The evidence sufficiently shows that the conductor was informed at Syracuse that the arrest was for a crime committed in Indiana. The officers had no authority real or apparent to do the act, and the defendant's agents would not be excused in this instance if they did not know it. They were informed that the seizure was for a crime committed in the State of Indiana. Therefore they are not excused if in fact ignorant that a legal arrest could be made pursuant to the Constitution (Article 4, §2, subdiv. 2) and statute of the United States (R. S. [U. S.] §5278), only by virtue of Sections 827-829 of the Code of Criminal Procedure of the State of New York, wherein the process required is defined. The law gives the Governor of the state and a magistrate, each the power to cause the arrest by a warrant issued. The fact and the applicable law were present to the conductor. He ignored both, and was contented with a mere emblem that denoted an officer but carried no authority whatever. Had the conductor merely asked whether the officers had the Governor's

or magistrate's warrant, he would have learned the truth—and having learned the truth he would have permitted without some intervention the removal at the peril of his employer. But there was no inquiry and not a word of protest.

The defendant depends upon two positions (1) that the intruders were policemen, and thereby appeared to have authority to arrest; (2) that the statute (Code Criminal Procedure, §177) re-
112 lating to crimes committed in this state, authorizing arrests without a warrant, apply to felonies committed in a foreign state. So the defense is apparent authority from the official status of the captor, and actual authority from the extra territorial application of our criminal procedure. But the Code makes specific provision that for the arrest of those accused of crime done beyond the state the warrant of the Governor or a magistrate shall be obtained. The provisions of Section 177 of the Code of Criminal Procedure are not extended to such case. Precisely how the arrest shall be made is written in the statute, to wit, by warrant served as our law requires. The whole criminal procedure is not assimilated, but there is interpolated in it an exact statement of what shall be done to authorize the arrest. This in itself excludes what in any case would be inapplicable to an extra territorial offense.

This brings the question to what I deem the debatable point, namely, if a police officer would enter cars and seize a passenger, should the carrier admit him, and suffer the arrest without any inquiry or intervention, and may it with impunity countenance, encourage and aid the arrest to the extent above indicated. In deciding this, it must be considered that the policeman, although such, and as such competent to serve a warrant, has none; that he has no actual authority to make the arrest; that the carrier cannot plead ignorance of the law as a defense if it omit its duty. So the first proposition to be maintained by defendant is, that an officer, known to be authorized to arrest only with a warrant, may without authority enter a car and capture passengers without any duty of protection on the part of the carrier—and this because the carrier must assume that the officer has full right to make the capture. A person justly recognizes the authority of an officer not from his official status, at least not from that alone, but because he appears to have the
113 authority. He may appear to have it because he carries a warrant that gives legal color to his action, or because the law dresses him with authority to make the arrest without warrant. Now, when the officer acts under the color of authority, arising either from his papers or the provisions of law, the carrier is not required to look behind such appearances of authority. But the naked fact that a person is an officer does not make him appear to have a warrant, nor to be competent to arrest without it. Whatever the law may permit him to do, he appears to the carrier authorized to do it. But in the present case no law casts upon the intruders such appearance, nor could it appear to the carrier to do so. The carrier was informed that the crime was committed in Indiana, and was bound to know that an arrest therefor without a warrant was illegal. There are decisions that police officers may arrest in a state

passengers for crimes committed therein, and it need not or should not interfere. The conclusion is quite logical. The law in such cases authorizes arrest with or without warrant, and the carrier must respect a warrant if presented, or the apparent authority given by the statute or common law to arrest without it. The carrier need not consider whether the facts support the asserted exercise of authority, provided the officers appear to be acting within its general scope. But in the present case the carrier knew that the officers were not acting within the scope of such general authority, and it was bound to know that there was no law that protected the act which they were doing. In the one case the law so clothes the officer with power justly exercisable upon given conditions that he appears to the carrier enabled to act. It is not for the carrier to test the presence of the conditions; it is enough for it that they may exist. But here no such facts, real or apparent, existed or were asserted, but the
114 carrier was told the facts by the officers that showed the latter to be wrongdoers. But being told that the officers were about to do an illegal thing, the conductor let them enter the train and showed them, or caused them to be shown, the persons on whom they could perpetrate it, told the passengers that they had better submit, and accompanied the plaintiffs to the stateroom. There was no inquiry, after full opportunity for it, during fifty-four miles of travel, occupying one hour and fifteen minutes before the passengers were finally removed. So the carrier, remaining not even passive, aided the undertaking as it did.

Had these same officers presented themselves to a conductor and showing their shields, demanded freight, without such warrant or process as the law requires, its delivery would not be excused. (Nickey v. St. L., I. M. & S. Ry. Co., 35 Mo. App., 79; Merriman v. Great Northern Exp. Co., 63 Min., 543.) Seizure of goods by a police officer falls under the same rule. The law requires a written process in such case and in this case. So far the analogy holds. It is true that the goods are wholly committed to, and have no protection save through the carrier, maybe an insurer, while the passenger, transported under the carrier's obligation to use care against assaults, has some self capacity to defend himself, or to submit, or to exercise other judgment. This goes to the degree of protection due to the passenger and the extent to which it should be afforded. But the present decision is that the carrier owes no duty and may facilitate the arrest notwithstanding an appeal to him for protection. The defendant's cars are the shelter to which it invites the passengers, the place where the latter are isolated from usual safeguarding environments and opportunities. These cars a police officer unauthorized has no right to enter, and to them the carrier may not bid
115 policemen nor suffer them to come to make false arrests without some intervention; and above all, the carrier may not abet the entry and the capture. So when an officer presents himself, the burden is on the carrier to demand the exhibition of his authority, and when it is not produced, and does not appear without exhibition, to use practicable care to protect the passenger, as it would against any other assault, for it is only that. It is either this or an uncon-

ditional recognition of the right of any officer to do anything he will in the seizure of passengers or their property, suffered or permitted thereto by the carrier.

I will now discuss more particularly the participation of the carrier through its agent in the arrest. The defendant had the plaintiffs in his charge as passengers, and allotted to them seats and berths in the car for the purposes of transportation and as an abiding place during its continuance. Two men came to make an unlawful removal of such passengers. The carrier's agent was advised of the purpose, and was bound to know that it was unlawful. He did not concert the plan for the seizure, but he did (1) consent to it by giving leave to the men to enter the car; (2) he conducted them to the car, or caused them to be so conducted; (3) he led or caused them to be led to the plaintiffs' berth for the purpose of identification; (4) he and others connected with the carriage stood by while the seizure was made; (5) the conductor, when appealed to for protection, told the passengers that they had better go along without any trouble, which, in view of the relations, is more in the nature of a command than of advice; (7) he suffered the passengers to be carried in charge of the officers to Utica, and there removed. These acts and omissions, in gross at least, show that the carrier consented to the illegal act, encouraged it by aiding it, and thereby tended to bring about the unlawful result. Whoever, by
116 words, acts, gestures, looks or signs, so encourages and aids the commission of a tort, is a joint tort feasor (McManus v. Lee, 43 Mo., 206, 208; Cooper v. Johnson, 81 Mo., 483; Smith v. Felt, 50 Barb., 612). So the wrongful act was done by defendant's co-operation, and tended naturally to effectuate the illegal errand (Brooks v. Ashburn, 9 Ga., 296, 302). This is not a case where the accused party, having no duty to restrain illegal aggressions, merely licenses, so far as he is concerned, a wrongdoer to enter upon premises or to use facilities. In Robinson v. Vaughton (8 Carrington & Payne's Reports, 252), it was considered that if A gives B leave to go on a field in which he has no right, A is not liable for B's trespass thereon; but otherwise, if A orders and authorized it. But in the case at bar the defendant not only licensed or permitted the men to go on its car to do an act, which it was bound to know was illegal and which was the initial breach of its duty to the passenger, but by direct interposition aided in the seizure. Hence it not only, against its duty, countenanced the commission of the tort, but affirmatively aided it (Moir v. Hopkins, 16 Ill., 313, 315). In Hill v. Walker (Peake's Additional Cases, 234), several persons were engaged in a common hunt. Lawrence, J., said: "The defendant having purposely led the rest of the party to this place, and waited while they went into it, he was equally guilty of a trespass as if he had personally gone or sent his own down into it." I consider that the liability would have been the same had the defendant joined the party at the field and shown the way for the purpose of effectuating the purpose, knowing it to be unlawful. Such at least would be the case if a crime, like an assault, were committed. In Allred v. Bray (41 Mo., 484, 487), it was said: "There seems to

be no principle of law better settled than that all persons
117 who wrongfully contribute in any manner to the commission of a trespass, * * * are responsible as principals. * * * It is necessary, likewise, to show what degree of efficiency he exhibited in giving aid and countenance to those who actually broke into the store and took the plaintiff's goods. It is enough if he was found to be acting in concert with the others. * * * If he was present at any time during the commission of the wrongful act, giving aid and countenance to it, he should be held liable to the extent of the injury done." In Carter v. Fulgham (134 Ala., 238), it was stated that if one Jamar aided Holmes, an officer, in the seizure of plaintiff's property, "by locating and pointing out" the same, "for the purpose of their being taken, and for which he was to receive compensation, and the taking * * * by Holmes was wrongful, then Jamar was a joint tort feasor." I consider that it is unnecessary that a person assisting in a tort or a crime should be entitled to compensation in money for his participation, in order to charge him as a joint wrongdoer. If it be the law that a carrier may hold himself aloof when a peace officer seizes its passengers, its attitude cannot be regarded as merely passive where in any degree it facilitates the act.

Thus far the case of the mother has been considered as identical with that of the daughter. But the officers on the trial disclaimed any direction or ever intention to seize the mother, and made no pretense that they made any demand for her from the carrier. Their position now is that they did not want the mother, but that she went voluntarily. But there is sufficient evidence that she was seized and carried away against her will. It was not until the berth was opened that the relationship of the plaintiffs was disclosed, and it was on account of that, and her association with the daughter,
that she was apprehended. Any other passenger might have
118 been taken with equal right. There was no authority to take either. But as to the mother's case the situation is this, that the officers, for the mere reason that they were such, were allowed to seize a passenger against whom no crime was charged, for the sole reason that she was traveling with a person for whom they were searching. Therefore, if the judgment in the mother's case has been correctly decided, the carrier owes no duty to protect its passengers against officers who, coming upon the train to seize one person, also captures her relative and travelling companion. The weight of the evidence does not now concern the inquiry, nor how far the carrier should have carried its protection. It afforded none; it withdrew what it had been extending, and joined in the illegal enterprise.

For the reasons stated, my conclusion is that there should have been a submission to the jury in each action.

Stipulation Waiving Certification.

Pursuant to Section 3301 of the Code of Civil Procedure, it is hereby stipulated that the foregoing consists of true and correct

copies of the Notice of Appeal, Judgment Roll and Case and Exceptions as settled and printed to the Appellate Division, the Order of Affirmance, Judgment of Affirmance and Notice of Appeal to Court of Appeals, and the whole thereof now on file in the office of the Clerk of Kings County; and certification thereof by the Clerk pursuant to Section 1353 of the Code of Civil Procedure is hereby waived.

Dated, March 5, 1912.

WILLIAM F. CONNELL,
Attorney for Plaintiff-Appellant.
ALEX. S. LYMAN,
Attorney for Defendant-Respondent.

O. K.
T. S.

Supreme Court, Appellate Division, Second Judicial Department.

Clerk's Office,
Borough of Brooklyn, N. Y.

I, John B. Byrne, Clerk of the Appellate Division of the Supreme Court in the Second Judicial Department, do hereby certify that the foregoing is a copy of the opinions delivered by said court upon the Appeal in the above entitled action and filed in my office on the 15th day of December 1911, and that the same is a correct transcript thereof and of the whole of the said original.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said Court, at the Borough of Brooklyn, this 8th day of December, 1915.

[Seal Supreme Court, Appellate Division, Second Department.]

JOHN B. BYRNE, *Clerk.*

119 STATE OF NEW YORK,
Court of Appeals, State Reporter's Office, ss:

I, J. Newton Fiero, Reporter of the Court of Appeals of the State of New York, do hereby certify that in the Case of Lucinda Burton, Appellant, v. New York Central and Hudson River Railroad, decided by the Court of Appeals on February 3rd, 1914, there were no opinions rendered.

In witness whereof, I have hereunto affixed my signature as Reporter of the Court of Appeals, at the City of Albany, in the State of New York, this 7th day of December, 1915.

J. NEWTON FIERO,
As Reporter of the Court of Appeals of the State of New York.

[Seal State of New York Court of Appeals.]

Attest:
R. M. BARBER,
Clerk of the Court of Appeals.

STATE OF NEW YORK,
Court of Appeals:

I, Willard Bartlett, Chief Judge of the Court of Appeals of the State of New York, the highest Appellate Court and Court of Record in and for said State, do hereby certify that R. M. Barber is the Clerk of said Court, having custody of the seal of said Court and of the decisions, minutes and records thereof, and that J. Newton Fiero is the official Reporter of said Court, having charge and custody of the official opinions, written and handed down by said Court and the members thereof, and of the official publication and reports thereof; and I further certify that the attestation and authentication, by said Clerk and said Reporter of the above certificate that there were no opinions rendered in the Case of Lucinda Burton v. New York Central and Hudson River Railroad, decided by said Court of Appeals on February 3rd, 1914, is in due form and sufficient under the Laws of the State of New York, and the Rules and Practice of the Court of Appeals; that the said imprint thereon is the true and genuine seal of the said Court of Appeals, and that the signature of R. M. Barber, as Clerk of said Court, appended thereto is the true and genuine signature of said R. M. Barber, and that the signature of J. Newton Fiero, as reporter of said Court, appended thereto is the true and genuine signature of said J. Newton Fiero.

In witness whereof, I have hereunto subscribed my official signature, at the Chambers of said Court, at the Capitol of said State, in the City of Albany, and State of New York, on the 8th day of December, 1915.

WILLARD BARTLETT,
As Chief Judge of the Court of Appeals of the State of New York.

120 Court of Appeals.

STATE OF NEW YORK, *ss:*

Pleas in the Court of Appeals, held at the Capitol, in the City of Albany, on the 3rd day of February, in the year of our Lord one thousand nine hundred and fourteen, before the Judges of said Court.

Witness, the Hon. Willard Bartlett, Chief Judge, presiding.

R. M. BARBER, *Clerk.*

Remittitur. February 4th, 1914.

LUCINDA BURTON, Appellant,
ag'st
NEW YORK CENTRAL AND HUDSON RIVER RAILROAD COMPANY,
Respondent.

Be it remembered, That on the 13th day of March, in the year of our Lord one thousand nine hundred and twelve, Lucinda Burton the appellant in this action, came here into the Court of Appeals,

by William F. Connell her attorney, and filed in the said Court Notices of Appeal and return thereto from the Judgments and orders of the Appellate Division of the Supreme Court in and for the Second Judicial Department. And New York Central and Hudson River Railroad Company the respondent in said action, afterwards appeared in said Court of Appeals by Alex. S. Lyman its attorney.

Which said Notices of Appeal and the return thereto filed as aforesaid, are hereunto annexed.

Whereupon, the said Court of Appeals having heard this cause argued by Mr. William F. Connell of counsel for the appel-
121 lant, and by Mr. Robert A. Kutschbock of Counsel for the respondent, and after due deliberation had thereon, did order and adjudge that the judgment of the Appellate Division of the Supreme Court appealed from in this action, be in all things affirmed. And it was further ordered and adjudged that the respondent recover against the appellant costs of appeal to this Court.

And it was also further ordered, that the record aforesaid, and the proceedings in this Court be remitted to the said Supreme Court, there to be proceeded upon according to law.

Therefore, it is considered that the said judgment be in all things affirmed with costs as aforesaid, and stand in full force, strength and effect.

And hereupon, as well the Notices of Appeal and return thereto aforesaid as the judgment of the Court of Appeals aforesaid, by them given in the premises, are by the said Court of Appeals, remitted into the Supreme Court of the State of New York, before the Justices thereof, according to the form of the statute in such case made and provided, to be enforced according to law, and which record now remains in the said Supreme Court before the Justices thereof, &c.

R. M. BARBER,
Clerk of the Court of Appeals of the State of New York.

Court of Appeals.

Clerk's Office.

ALBANY, Feb'y 4th, 1914.

I hereby certify that the preceding record contains a correct transcript of the proceedings in said action in the Court of Appeals, with the papers originally filed therein, attached thereto.

[SEAL.] R. M. BARBER, *Clerk.*

O. K.
T. S.

10—775

122 At a Special Term of the Supreme Court, Held in and for the County of Kings, at the County Court House, in said County, on the 7 day of May, 1914.

Present: Honorable Isaac M. Kapper, Justice.

LUCINDA BURTON, Plaintiff,
against
THE NEW YORK CENTRAL AND HUDSON RIVER RAILROAD COMPANY,
Defendant.

Order on Remittitur.

The above-named plaintiff having appealed to the Court of Appeals of the State of New York from the final judgment entered and filed in the office of the Clerk of the County of Kings on the 24th day of January, 1912, whereby it was adjudged that the defendant recover against the plaintiff the sum of Two Hundred and seventy-four one-hundredths dollars ($200.74) costs; and the said appeal having been duly argued at the Court of Appeals, and after due deliberation the Court of Appeals having ordered and adjudged that the said judgment so appealed from as aforesaid be affirmed with costs, and having further ordered and adjudged that the proceedings therein be remitted to the Supreme Court there to be proceeded upon according to law; Now, on reading and filing the remittitur from the Court of Appeals herein, and upon motion of Alex. S. Lyman, Esq., attorney for the defendant, it is,

123 Ordered, that the said order and judgment of the Court of Appeals be and the same hereby are made the order and judgment of this court.

Enter,

I. M. K., *J. S. C.*

Granted May 7, 1914.
CHARLES S. DEVOY, *Clerk.*

O. K.
T. S.
5-8-1914.

124 [Endorsed:] Supreme Court, Kings County. County Clerk's Index No. 2838, Year 1911. Lucinda Burton, Plaintiff, against The New York Central and Hudson River Railroad Company, Defendant. Copy. Order on Remittitur. Alex. S. Lyman, Attorney for Defendant, 3516 Grand Central Terminal, Borough of Manhattan, New York City. To William F. Connell, Esq., O. & P. O. address 16 Court St., Brooklyn Borough, N. Y. Cy., Attorney for Plaintiff. Due and timely service of a copy of the within Order on Remittitur is hereby admitted. Dated N. Y., May 4, 1914. —— ——, Attorney for Plaintiff. Rec'd May 8–14.

SIR: Please take Notice that the within is a copy of Order on Remittitur duly entered herein, and filed in the Office of the Clerk of the County of Kings on the 8th day of May 1914. Dated N. Y., May 8, 1914.

Yours, &c.

ALEX. S. LYMAN,
Attorney for Defendant.

3516 Grand Central Terminal, Borough of Manhattan, New York City.

To William F. Connell, Esq., O. & P. O. address 16 Court St., Brooklyn Borough, N. Y. Cy, Attorney for Plaintiff.

125 Supreme Court, Kings County.

LUCINDA BURTON, Plaintiff,
against
THE NEW YORK CENTRAL AND HUDSON RIVER RAILROAD COMPANY,
Defendant.

Judgment on Remittitur.

Dated May 4, 1914.

An order in this action in favor of the defendant and against the plaintiff having been granted in this court on the 2nd day of March, 1911, dismissing the complaint of the plaintiff herein and directing judgment accordingly, and further ordering that the exceptions taken herein be heard by the Appellate Division of the Supreme Court, Second Judicial Department, in the first instance and that judgment be suspended in the meantime, and said exceptions having been duly reached and argued in the said Appellate Division, and the said Appellate Division having, on the 15th day of December, 1911, been taxed at the sum of Two Hundred and seventy-four one-hundredths dollars ($200.74), and judgment of affirmance having been rendered thereon on the 24th day of January, 1912, and that the defendant recover against the plaintiff Two Hundred and seventy-four one-hundredths dollars ($200.74) costs of the trial and of said appeal; and the plaintiff having appealed therefrom to the Court of Appeals; and the said Court of Appeals having sent hither its remittitur, filed herein on the 1st day of May, 1914, by which it appears that the said Court of Appeals has affirmed the said judgment in all things with costs, and has given judgment accordingly, and has remitted the judgment of said
126 Court of Appeals to this court to *to* be enforced according to law; and this court having by an order duly entered herein on the 4th day of May, 1914, ordered that said judgment be made the judgment of this court, and the defendant's costs having been taxed at the sum of One Hundred and Twenty dollars ($120.00), Now, on motion of Alex. S. Lyman, Esq., attorney for the defendant, it is

Adjudged, that the said order and judgment of the Court of Appeals be and the same hereby are made the order and judgment of this court, and that the The New York Central and Hudson River Railroad Company the Deft. herein recover from the Plaintiff Lucinda Burton the sum of one hundred and twenty dollars, its costs as taxed.

CHAS. S. DEVOY, *Clk.*

O. K.
T. S.

5-8-1914.

@12.18.

127 [Endorsed:] Supreme Court, Kings County. County Clerk's Index No. 2838, Year 1911. Lucinda Burton, Plaintiff, against The New York Central and Hudson River Railroad Company, Defendant. Copy. Judgment on Remittitur, dated May 4, 1914. Alex. S. Lyman, Attorney for Defendant, 3516 Grand Central Terminal, Borough of Manhattan, New York City. To William F. Connell, Esq., O. & P. O. address 16 Court St., Brooklyn Borough, N. Y. Cy, Attorney for Plaintiff. Due and timely service of a copy of the within Judgment on Remittitur is hereby admitted. Dated N. Y., May 4, 1914. —— ——, Attorney for Plaintiff.

SIR: Please take Notice that the within is a copy of Judgment on Remittitur duly entered herein, and filed in the Office of the Clerk of the County of Kings on the 8th day of May, 1914. Dated N. Y., May 8, 1914.

Yours, &c.,

ALEX. S. LYMAN,
Attorney for Defendant.

3516 Grand Central Terminal, Borough of Manhattan, New York City.

To William F. Connell, Esq., O. & P. O. address, 16 Court St., Brooklyn Borough, N. Y., Cy, Attorney for Plaintiff.

128 In the Supreme Court of the United States.

LUCINDA BURTON, Plaintiff in Error,
against
NEW YORK CENTRAL AND HUDSON RIVER RAILROAD COMPANY,
Defendant in Error.

Petition for Writ of Error.

To the Supreme Court of the United States:

The Petition of Lucinda Burton, by William F. Connell, her Attorney, respectfully shows:—

That the Plaintiff in Error, was, at the time of the commencement of this action a resident of the Borough of Brooklyn, State and City of New York.

That the Defendant in Error, was, and still is a domestic Railroad Corporation, engaged in business as a Common Carrier of passengers for hire, by means of cars run and operated over various lines, both in the State of New York, and adjoining States.

That on the 8th day of May, 1908, Plaintiff in Error accompanied by her daughter, Cora B. Heeren, boarded a train operated by Defendant in Error, at Franklin, Pennsylvania, of which place she was then a resident, where she purchased a ticket entitling her to transportation thereon to New York City.

Upon reaching Ashtabula, Ohio, which was an intermediate station, she was directed to change cars for the purpose of continuing her journey, and later applied for accommodations in a Pullman sleeping car, that was attached to said train, but was informed
129 that such could not be afforded her until the train arrived at Erie, Pennsylvania, where she procured, and was assigned to lower berth Number 1, in Section 1, Pullman Car Number 1, and retired therein about 8 o'clock P. M., both Plaintiff in Error and her daughter occupying the same berth.

On the following day, May 9th, 1908, the train reached Syracuse, New York, about 12:10 o'clock A. M. in charge of one John Nowlan, the Conductor thereof, whom up to that date had been in the employment of Defendant in Error, for a period of nearly nineteen years, he being at the time on the rear platform of the day coach adjoining said sleeping car, and while persuing his customary habit of stepping from the platform of said car on to the station platform, as the train was about to stop, he was met by two men, whom subsequently turned out to be one Charles Niess and the other John F. Donovan. They approached Conductor Nowlan by saying, "You have some people, two ladies in lower 1, Car 1," and further stated that they wanted to interview them, whereupon Nowlan asked them for their authority, which requisition was met by the production of a metal shield or badge, the inscription thereon, indicating such to be that of a Police Officer of the City of Syracuse, and without further inquiry Nowlan admitted both of the men to the said car, at the same time directing the Negro Pullman Porter, to accompany them for the purpose of showing them the exact location of the Section and berth that Plaintiff in Error and her daughter were occupying at the time.

After gaining admission to the said car as aforesaid, and upon reaching Section 1 therein, Niess and Donovan, with some difficulty succeeded in pulling back the curtains that were attached to lower berth Number 1, and flashing an electric lantern into said
130 berth, thus arousing the occupants thereof, both of whom were asleep at the time, attired in nothing more than night gowns, in a boisterous, insulting manner ordered Plaintiff in Error and her daughter to immediately vacate their said berth and dress themselves, with a further statement, that if they failed so to do forthwith, or made any show in said car, that they both Niess and Donovan would

take Plaintiff in Error out of said berth. At this time Nowlan, the Conductor, and the train crew were present.

Both occupants of said berth became extremely frightened and excited at the unusual conduct of the men, thinking at first that the motive of their illegal invasion was robbery, and upon demanding an explanation from them, plaintiff in error was informed "that they wanted her, and directed her to vacate her berth, which she did under protest.

By this time the passengers in said sleeping car were aroused by the unusual commotion, caused by the insistance of Niess and Donovan that Plaintiff in Error and her daughter get out of their berth and dress themselves in the presence of these two men, at the same time both women refusing to expose themselves in such a manner, not alone before Niess and Donovan, but also before the innumerable spectators that had congregated in the aisle of said car, but after some consideration, fearing that Niess and Donovan would carry out their previous threat, and take them out without any clothing on, as was testified to upon the trial, Plaintiff in Error and her daughter submitted to the gross indignity and humiliation forced upon them, and partly dressed themselves in presence of Niess, Donovan and the said spectators.

When Plaintiff in Error was arguing with the men, and protesting against the vile treatment that both she and her daughter were being subjected to by them, the train Conductor, Nowlan was present, also the Conductor of the Pullman car and Negro Porter,
131 about which time she heard Nowlan tell Niess and Donovan the men who had taken her and her daughter out of their berth, that they could not take them off until the train reached Utica, New York, that being the next station.

Plaintiff in Error and her daughter were then ordered by Niess and Donovan to accompany them to a Stateroom at the other end of said car, but fearing that they might be subjected to further indignities thereupon appealed to Conductor Nowlan for protection, Cora B. Heeren, daughter of the Plaintiff in Error, saying to him, "I am not the woman that is wanted, can't you do something for me; I am not the one, there is a mistake here", to which appeal Nowlan momentarily responded and referring to both women said, "You had better go along without any trouble". Plaintiff in Error and her daughter were then escorted by Niess, Donovan, Conductor Nowlan, the Pullman Conductor and Negro Porter, in a half clothed condition, through the said car, they being the observed of most observers, to a Stateroom at the end thereof wherein they were compelled to complete dressing themselves—nearly 45 minutes having elapsed between the time that they were taken out of their berth as aforesaid, and the time that they were taken into the said Stateroom.

During the time that Plaintiff in Error and her daughter were in said Stateroom either Niess and Donovan, besides Conductor Nowlan and one of the aforesaid members of the train crew were alternatively present, viewing with silence and impunity two innocent passengers of unblemished character being subjected to this unlawful treatment, in itself an atrocious assault.

The distance from the City of Syracuse, New York, to Utica, New York, is 54 miles, the running time being one hour and fifty-three minutes, and it was not until half that distance had been traversed that Conductor Nowlan was informed by Niess and Donovan
132 that Cora B. Heeren, the daughter of Plaintiff in Error was supposed to be Mrs. Guinness, an alleged Murderess of Indiana, or that she was charged with any crime whatever, nor did he make any effort to discover the truth, or avert the indignity, but accepted the metal shield, or emblem aforesaid that was presented to him at Syracuse, New York, as endowing Niess and Donovan with due process of law for the apprehension of these two women, both of whom were absolutely innocent of any wrongdoing.

Plaintiff in Error was never at any time charged with the commission of any crime, but was compelled to submit to similar treatment as that accorded her daughter Cora B. Heeren, notwithstanding her protest and plea to Conductor Nowlan for protection. The said Police Officers were not possessed of any Warrant whatsoever, for the apprehension of either of the women, or any other person or persons, and Nowlan the train Conductor, never demanded the production of a Warrant at any time.

Upon arrival of the train at Utica, New York, Plaintiff in Error was taken therefrom into the Station waiting Room, and there surrounded by a crowd of people.

Both women were subsequently forced by Niess and Donovan aboard the next West-bound train, Plaintiff in Error being in custody of one policeman and her daughter in the custody of the other policeman, when one James J. Landers, a detective in the employ of Defendant in Error, entered the car in which they were, and approaching the party, said to the policeman in charge of the daughter of Plaintiff in Error, "You have got her, she is the one, hold on to her."

Both women were brought to Syracuse, New York, a large crowd awaiting them, they were taken to the City prison, where Plaintiff in Error was separated from her daughter, locked up and there confined for upwards of fifteen hours, was never arraigned before
133 a Magistrate or Judge, or in any Court, or ever shown any Warrant, and held a prisoner until 4 o'clock P. M. when she was released from custody.

That on or about the 24th day of September 1908, an action was commenced by Plaintiff in Error against Defendant in Error, in the Supreme Court of the State of New York, held in and for the County of Kings, and a Summons and Complaint served therein alleging substantially the facts hereinbefore stated, and further;

"Fifth":—That the arrest, ejectment and removal of the plaintiff from defendant's cars as aforesaid, was in violation of the Constitution of the United States", and asking that damages in the sum of Thirty Thousand Dollars be awarded her.

That on or about the 4th day of November 1908, issue was joined by service of an Answer by Defendant in Error, which admitted all the material facts as alleged in the said Complaint, but denied paragraph Marked "Fifth" as heretofore stated, and pleaded the follow-

ing as a separate and distinct defense to the said cause of action, which is as follows:—

"For a second, separate and distinct defense to the alleged cause of action in the Complaint set forth, the defendant further avers and alleges that on the 9th day of May 1908, two Peace Officers of the City of Syracuse, New York, boarded said train of defendant upon which plaintiff was a passenger at Syracuse, New York, in search of a person who had committed a felony, and having had reasonable cause for believing a person who was accompanied by plaintiff to have been the person who committed said felony, placed the person who was accompanied by plaintiff under arrest and removed her from said train upon its arrival at defendant's station in the City of Utica, New York, and that plaintiff insisted upon remaining with and accompanying the said person arrested by said Peace Officers,
and did so remain with and accompany her without con-
134 nivance, inducement, or compulsion by or upon the part of
this defendant, its agents, or servants, or by or upon the part of said Peace Officers.

That the case was tried on the 27th and 28th days of February, 1911, together with the case of Cora B. Heeren against defendant in error, under stipulation that the same testimony be applied to both cases, and at the termination of the trial, Counsel for Plaintiff in Error, made a motion that he be permitted to go to the Jury upon the issues in the action, and upon all the evidence, which motion was denied, and the Complaint dismissed, the trial Justice, stating that, "The question I think new in this State," and directed the exceptions taken be heard by the Appellate Division of the Supreme Court, Second Judicial Department, in the first instance.

Upon appeal to the Appellate Division, the Judgment was affirmed and the exception overruled, there being three opinions rendered, the prevailing opinion holding that the arrest of the plaintiff in error was justified and not in violation of the Constitution of the United States and Act of Congress of 1793, as was contended by Counsel for Plaintiff in Error—the Appellant below, and that the conduct of the Conductor and other members of the train crew was in accordance with the law, and involved no liability to the plaintiffs.

The opinion concurring in the result for affirmance, holds, that it was not necessary to decide whether the police officers had legal power to make the arrest in question, or mandatory upon the Conductor to inquire if the policemen had a warrant issued by the Governor or a Magistrate; that it should have been presumed prima facie, by the train officers, that the policemen were acting lawfully, and adds: "If such information had been before him, as it was not,
he has not then obliged to determine at the risk of his em-
135 ployer, a question of law as to which the Justices of this
Court are not in complete harmony."

A dissenting opinion was written by Mr. Justice Thomas, now one of the Justices of said Court sustaining the contention as urged by Counsel for Plaintiff in Error, and concludes that there should have been a submission to the Jury in each action.

An appeal was taken by Plaintiff to the Court of Appeals from the Judgment of the Appellate Division of the Supreme Court on January 2nd 1912, was argued before said Court on January 16, 1914, and on the 3rd day of February 1914, the said Judgment was by said Court unanimously affirmed, without opinion.

Your Petitioner avers, that

The right to arrest, in this State, the citizen of another State, for a crime committed against the laws of that other State, is wholly regulated by the Constitution of the United States and the Act of Congress 1793, and this State has no authority to cause the arrest of such citizen without first complying with the requirements of the United States Constitution for this State does not possess by comity or otherwise the right to detain or arrest the citizen of another State. (See Art. 4, Sec. 2 subdiv. 2 U. S. Constitution and Statute- of the United States (R. S.) S. 5278. Sections 827-829 Code of Criminal Procedure New York.)

The provisions of the United States Constitution are as follows:

Article 4, Sec. 2, Sub. Div. 2:

"A person charged in any State with treason, felony or other crime, who shall flee from justice and be found in another State, shall on demand of the executive authority of the State from which he fled, be delivered up to be removed to the State having jurisdiction of the crime."

Under this, Congress has enacted (see Act of Congress, 1793, Sec. 5278, R. S.):

136 "Whenever the executive authority of any State or Territory demands any person as a fugutive from justice of the executive authority of any State or Territory to which such person has fled, and produces a copy of an indictment found, or of any affidavit made before a Magistrate of any State or Territory, charging the person demanded of having committed treason, felony or other crime certified as authentic by the Governor or Chief of Police of the State or Territory from whence the person so charged has fled, it shall be the duty of the executive authority of the State or Territory, to which such person has fled to cause him to be arrested and secured and to cause a notice of the arrest to be given to the executive authority making such demand or to the agent of such authority appointed to receive the fugitive and to cause him to be delivered to such agent when he shall appear."

In accordance with the provision of the United States Constitution and Act of Congress, the Legislation of the State of New York has provided, Section 827, 829, of Criminal Procedure:

"It shall be the duty of the Governor in all cases where by virtue of a requisition made upon him by the Governor of another State or Territory, any citizen, inhabitant or temporary resident of this State, is to be arrested, as a fugitive from justice, provided that said requisition be accompanied by a duly certified copy of the indictment or information from the authorities of such other State or Territory, charging such person with treason, felony or crime in such State or Territory, to issue and transmit a warrant for such purpose to the sheriff of the proper county, or his under sheriff or

in the Cities of this State (except in the City and County of New York, where such warrant shall only be issued to the superintendents or any inspector of police), to the chiefs, inspectors or superint-ndents of police, and only such officers as are above men-
137 tioned, and such assistants, as they may designate to act under their direction, shall be competent to make service of or execute the same. The Governor may direct that any such fugitive be brought before him, and may, for cause, by him deemed proper, revoke any warrant issued by him, as herein provided. The officer to whom is directed and entrusted the execution of the Governor's warrant must, within thirty days of its date, unless sooner requested, return the same and make return to the Governor of all his proceedings had thereunder, and of all facts and circumstances relating thereto. Any Officer of this State, or of any City, Town or Village thereof, must upon request of the Governor, furnish him with such information as he may desire in regard to any person or matter mentioned in this chapter.

"2. Before any officer to whom such warrant shall be directed and instructed shall deliver the person arrested into the custody of the agent or agents named in the warrant of the Governor of this State, such officer, must, unless the same be waived, as hereinafter stated, take the prisoner or prisoners before a judge of the Supreme Court or a County Court, who shall, in open Court, if in session, otherwise at chambers, inform the prisoner or prisoners of the cause of his or their arrest, the nature of the process and instruct him or them that if he or they claim not to be the particular person or persons mentioned in said requisition, indictment, affidavit or warrant annexed thereto, or in the warrant issued by the Governor thereon he or they may have a writ of habeas corpus upon filing an affidavit to that effect, said person or persons so arrested may, in writing consent to waive the right to be taken before said Court or a judge thereof, at chambers, such warrant or waiver shall be witnessed by the officer intrusted with the execution of the warrant of the Governor and one of the judges aforesaid or a counselor-at-law, of this State and such waiver shall be immediately for-
138 warded to the Governor by the officer who executed said warrant. If, after a summary hearing as speedy as may be consistent with justice, the prisoner or prisoners shall be found to be the person or persons indicted or informed against and mentioned in the requisition, the accompanying papers and the warrant issued by the Governor thereon then the Court or judge shall order and direct the officer intrusted with the execution of said warrant of the Governor, to deliver the prisoner or prisoners into the custody of the agent or agents designated in the requisition and the warrant issued thereon as the agent upon the part of such State to receive him or them, otherwise to be discharged from custody by the Court or judge.

"If, upon such hearing, the warrant of the Governor shall appear to be defective or improperly executed, it shall be by the Court or judge returned to the Governor, together with a statement of the defect or defects, for the purpose of being corrected and returned

to the Court or judge and such hearing shall be adjourned a sufficient time for the purpose and in such interval the prisoner or prisoners shall be held in custody until such hearing be finally disposed of.

"3. It shall not be lawful for any person, agent or officer to take any person or persons out of this State, upon the claim, ground or protest that the prisoner or prisoners consent to go, or by reason of his or their willingness to waive the proceedings aforedescribed, and any officer, agent, person or persons who shall procure, incite or aid in the arrest of any citizen, inhabitant or temporary resident of this State, for the purpose of taking him or sending him to another State without a requisition first duly had and obtained and without a warrant duly issued by the Governor of this State,
139 served by some officer as in this section provided, and without, except in case of waiver in writing as aforesaid, taking him before a Court or judge as aforesaid, unless in pursuance to the provisions of the following sections of this chapter, and any officer, agent, person or persons who shall by threats or undue influence, persuade any citizen, inhabitant or temporary resident of this State to sign the waiver of his rights to go before a court, or judge as hereinbefore provided, or who shall do any acts declared by this chapter to be unlawful, shall be guilty of a felony, and upon conviction be sentenced to imprisonment in a State prison or penitentiary for a term of one year. Any willful violation of this act of the above named officers shall be deemed a misdemeanor in office."

Your Petitioner further avers, that the acts of the officers were without authority and that they were trespassers. That when she became a passenger on the said train, Defendant in Error owed her an active duty and was bound to exercise due diligence to care for her safety and protect her against assault, insult, violence, not only from its own servants, but also from fellow passengers and strangers. That she was the victim of an illegal act, and the defendant Railroad Company was, and is chargeable with knowledge of the law, and its acquiescence, consent and assistance in the unlawful acts of these men rendered it liable as a joint tort feasor, because it was its duty to protect its passengers from unlawful interference, and ignorance of the law cannot excuse it from liability.

Your Petitioner avers, that the decisions and Judgments of the said Trial Court, the Judgment of the Appellate Division of the Supreme Court, and of the Court of Appeals constituted a failure to give full faith and credit to the acts complained of by petitioner, and thereby offended against the provisions of Section 2, Article 4, Subdivision 2 of the Constitution of the United States, and the
140 Acts of Congress of 1793, and the XIV Amendment of the United States Constitution.

Your Petitioner avers that the Judgments of said Courts and each of them denied to your Petitioner a title, right, privilege and immunity held by your Petitioner under the Constitution and Statutes of the United States, to the great prejudice of your petitioner all

of which will in more detail appear by the Record and assignment of errors herein.

Wherefore your petitioner prays for a Writ of Error directed to the Supreme Court of the State of New York, commanding that Court to send the Record of the proceedings in said suit or action aforesaid, and all things concerning same duly authenticated to the Justices of the Supreme Court of the United States, and for the usual Citation to the end that the record of the proceedings being inspected, the said Justices of the Supreme Court of the United States may cause further to be done therein to correct all errors what by right and according to the law and Constitution of the United States, ought to be done; that said Writ of Error operate as a Supersedeas, that the amount of security which the petitioners shall give and furnish on said Writ of Error may be fixed, and that upon the giving of such security, all further proceedings in said Court be suspended and stayed until the determination of said Writ of Error by the Supreme Court of the United States.

And your petitioners will ever pray.

LUCINDA BURTON,
Plaintiff in Error.
WILLIAM F. CONNELL,
Attorney for Plaintiff in Error.

141 UNITED STATES OF AMERICA,
State and City of New York,
County of Kings, ss:

Lucinda Burton, being duly sworn, deposes and says, that she is the Plaintiff in Error in the above entitled action; that she has read the foregoing petition and knows the contents thereof, and that the same is true to the knowledge of deponent, except as to the matters therein stated to be alleged upon her information and belief, and as to those matters she believes it to be true.

LUCINDA BURTON.

Subscribed and sworn to before me this 24th day of November 1915.

[Seal Joseph F. Conran, Notary Public, Kings County.]

JOSEPH F. CONRAN,
Notary Public, Kings County, New York.

142 [Endorsed:] 1911. No. 2838. 112/278. E. Supreme Court of the United States. Lucinda Burton, Plaintiff in Error, against New York Central & Hudson River Railroad Company, Defendant in Error. Petition for Writ of Error. Filed Dec. 8, 1915. William F. Connell, Attorney for Plaintiff in Error, 16 Court Street, Brooklyn, N. Y.

143 Supreme Court of the United States.

LUCINDA BURTON, Plaintiff in Error,
against
NEW YORK CENTRAL AND HUDSON RIVER RAILROAD COMPANY,
Defendant in Error.

Now come- Lucinda Burton, the above named plaintiff in error, by William F. Connell, her attorney, and in connection with the Writ of Error filed herewith, say-:

That in the record, proceedings, decision and final Judgment of the trial term of the Supreme Court of the State of New York, held in and for the County of Kings, the Appellate Division of the Supreme Court of the State of New York, held in and for the Second Judicial Department, and the Court of Appeals of the State of New York, there is manifest error in that, to wit:

First. The Trial Term of the Supreme Court of the State of New York, held in and for the County of Kings, erred in failing and refusing to submit the issues in the case to the Jury, as said issues were fully supported by the evidence, and the law applicable thereto.

Second. The Appellate Division of the Supreme Court, held in and for the Second Judicial Department erred, in holding that the arrest of plaintiff in error was not unlawful, and that defendant in error incurred no liability to plaintiff in error by reason thereof, as also did the Court of Appeals of the State of New York, committ error in affirming the said Judgment of the Appellate Division of the Supreme Court.

144 Third. That the Appellate Division of the Supreme Court erred in holding that the arrest of plaintiff in error was not in violation of Article 4, Section 2 of the Constitution of the United States, and the Acts of Congress of 1793, and that defendant in error was not liable to plaintiff in error by reason thereof, as did also the Court of Appeals committ error in affirming said Judgment in favor of defendant in error and against plaintiff in error.

Fourth. The Appellate Division of the Supreme Court, as did the Court of Appeals of the State of New York, committ error in failing to hold, that the right to arrest in this State, the citizen of another State, for a crime committed against the Laws of that other State, is wholly regulated by the Constitution of the United States and Act of Congress of 1793, and that this State has no authority to cause the arrest of said citizen without first complying with the requirements of the United States Constitution, for this State does not possess by comity or otherwise the right to detain, or arrest the citizen of another State, but that a legal arrest could be made pursuant to the Constitution (Article 4 S. 2 Subdiv. 2) and Statute of the United States (R. S.) (U. S.) S. 5278 only by virtue of Sections 827-829 of the Code of Criminal Procedure of the State of New York, wherein the process is defined.

Fifth. That the said Courts erred in failing to hold, that the arrest and detention of plaintiff in error was in violation and disregard of the Fourteenth Amendment, Section 1, of the Constitution of the United States.

Sixth. The Appellate Division of the Supreme Court erred in holding, that the Acts of the Officers in boarding the train of defendant in error, upon which plaintiff in error was a passenger, by permission of its Agents and servants, and arresting plaintiff in error, and taking her off the said train without a Warrant, or other legal authority were, and each of them was in accordance with law, and involved no liability to plaintiff in error by defendant in error, and the Court of Appeals of the State of New York, committed error in affirming the Judgment of said Court.

145 Seventh. That the said Courts and each of them, erred in failing to hold, that defendant in error was, and is chargeable with knowledge of, and presumed to know the law; that the arrest of plaintiff in error was in violation thereof, and its acquiescence, consent and assistance in the unlawful acts complained of rendered it liable as a joint tort feasor, and it is not excusable for either want of knowledge, or ignorance of the law.

Eighth. The said Courts erred in failing to hold, that it was the duty of defendant in error to protect plaintiff in error, who was a passenger on its train against assault, insult and violence not only from its own servants, but also from fellow passengers and strangers; that the acts of the officers were unlawful, that they were trespassers in violation of law, and that defendant in error was legally bound to resist their illegal acts and to exercise due diligence to care for the safety of plaintiff in error, and that it was wholly immaterial upon the question of defendant's liability that the servant acted in good faith, its failure, neglect and refusal so to do rendered it liable to plaintiff in error.

Ninth. That the said Courts erred in failing to hold that no matter what incited the servants of defendant in error to permit an unlawful act against the plaintiff in error, the defendant in error is liable for its natural and legitimate consequences.

Tenth. That the said Courts erred in failing to hold, that defendant in error is responsible to a passenger for a wrong inflicted by an intruder, stranger or follow passenger, if the Conductor or other servant knew, or ought to have known, or ought to have reasonably anticipated that it was threatened, and it could with the assistance of employees and other willing passengers have prevented it, but failed to do so.

146 Eleventh. The said Courts erred in failing to find, that once the relation of carrier and passenger is entered upon, the carrier is responsible for all consequences to the passenger for the wilful misconduct or negligence of the persons employed by it in the execution of the contract which it has undertaken towards the passenger.

Twelfth. That the arrest of plaintiff in error, then a resident of Pennsylvania, who was not charged with any crime, without any Warrant whatsoever, or other legal authority or demand, while she

was a passenger on the train of Defendant in Error in transit in the State of New York, was in violation of the Constitution of the United States, and the Act of Congress of 1793, and failure of the said Courts to so find was error.

Thirteenth. That the failure of the said Courts of the State of New York to hold as aforesaid, was error, and a denial of a right guaranteed to your petitioner under Article 4, Section 2 of the Constitution of the United States and the Act of Congress of 1793, and in violation of the Fourteenth Amendment, (Section 1) of the Constitution of the United States, and of all the legal and constitutional rights of the Plaintiff in Error.

Wherefore, Lucinda Burton, your petitioner, the plaintiff below and Plaintiff in Error, prays that the said Judgment of the Trial Term the Supreme Court of the State of New York, also the Judgment of the Appellate Division of the Supreme Court of the State of New York, and the Judgment of the Court of Appeals of the State of New York, as aforesaid be reversed and annulled, and altogether held for nothing, and that your petitioner be restored to all things which she has lost by the action of said Judgments, etc., and that she may have such other and further relief, according to law, as to your Court may seem just and proper.

147 Dated November 26th, 1915.

WILLIAM F. CONNELL,
Attorney for Plaintiff in Error.

Office and Post Office Address, 16 Court Street, Borough of Brooklyn, City of New York.

148 [Endorsed:] 1911. No. 2838. 112/278. E. Supreme Court of the United States. Lucinda Burton, Plaintiff in Error, against New York Central & Hudson River Railroad Company, Defendant in Error. Assignment of Errors. Filed Dec. 8, 1915. William F. Connell, Attorney for Plaintiff in Error, 16 Court Street, Brooklyn, N. Y.

149 UNITED STATES OF AMERICA, *ss:*

To New York Central and Hudson River Railroad Company, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date hereof, pursuant to a Writ of Error, filed in the Clerk's Office of the Supreme Court of the State of New York, wherein Lucinda Burton is plaintiff in error and the New York Central and Hudson River Railroad Company is defendant in error, to show cause, if any there be, why the Judgment rendered against the said plaintiff in error as in said Writ of Error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Charles E. Hughes, Associate Justice of

the Supreme Court of the United States, this 4th day of December, in the year 1915.

CHARLES E. HUGHES,
Associate Justice of the Supreme Court of the United States.

150 Personal service of the within Citation is hereby admitted this 8th day of December, 1915.

ALEX. S. LYMAN,
R. A. K.,
Attorney for Defendant in Error.

151 [Endorsed:] 1911. No. 2838. 112/278. E. Supreme Court of the United States. Lucinda Burton, Plaintiff in Error, against New York Central & Hudson River Railroad Company, Defendant in Error. Citation. Filed Dec. 8, 1915. William F. Connell, Attorney for Plaintiff in Error, 16 Court Street, Brooklyn, N. Y.

152 Supreme Court of the United States.

LUCINDA BURTON, Plaintiff in Error,
against
NEW YORK CENTRAL AND HUDSON RIVER RAILROAD COMPANY,
Defendant in Error.

Supersede-s Bond.

Know all men by these presents that we, Lucinda Burton, as principal, and Benjamin Rhein residing at 1069 Nostrand Avenue, in the Borough of Brooklyn, City of New York, and Theodore S. Miller, residing at 333 75th Street, in the Borough of Brooklyn, City of New York, as sureties, are held and firmly bound, jointly and severally unto the above named New York Central and Hudson River Railroad Company, in the sum of Five Hundred Dollars, to be paid to the said New York Central and Hudson River Railroad Company, for the payment of which, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors and administrators, firmly by these presents.

Sealed with our seals, and dated the 30th day of November, 1915.

Whereas lately in the Supreme Court of the State of New York, in a suit pending in said Court between Lucinda Burton, plaintiff-appellant, and the New York Central and Hudson River Railroad, defendant-respondent, a judgment was rendered on a remittitur from the Court of Appeals of the State of New York, against Lucinda Burton for costs, amounting to one hundred and twenty
153 dollars ($120.00), in favor of the said defendant-respondent, and the said plaintiff-appellant having obtained from a Jus-

tice of the Supreme Court of the United States, a Writ of Error, and filed a copy thereof in the Clerk's office of the Supreme Court of the State of New York to reverse the said judgment in the aforesaid suit, and a Citation directed to the said New York Central and Hudson River Railroad Company, citing and admonishing it to appear at the said Supreme Court of the United States, to be holden at the City of Washington, District of Columbia, within thirty (30) days from the date thereof;

Now, the condition of the above obligation is such, that if the said Lucinda Burton, the plaintiff in error aforesaid, shall prosecute said Writ of Error to effect and answer all damages and costs, if she fails to make her plea good, then the above obligation to be void, otherwise to remain in full force and effect.

LUCINDA BURTON.
BENJAMIN RHEIN. [L. S.]
THEODORE S. MILLER [L. S.]

154 UNITED STATES OF AMERICA,
State of New York,
County of Kings:

On this 30th day of November 1915, before me personally appeared Benjamin Rhein and Theodore S. Miller, to me personally known and known to me to be the persons described in and who executed the foregoing instrument as sureties therein, and severally acknowledged to me that they executed the same.

[Seal Joseph F. Conran, Notary Public, Kings County.]

JOSEPH F. CONRAN,
Notary Public, Kings County, New York.

UNITED STATES OF AMERICA,
State of New York,
County of Kings:

On this 30th day of November before me personally came Lucinda Burton, to me known and known to me to be the individual described in the foregoing instrument as Principal therein, and she duly acknowledged to me that she executed the same.

[Seal Joseph F. Conran, Notary Public, Kings County.]

JOSEPH F. CONRAN,
Notary Public, Kings County, New York.

UNITED STATES OF AMERICA,
State of New York,
County of Kings, ss:

Benjamin Rhein and Theodore S. Miller, Sureties on the foregoing Bond, being duly and severally sworn, doth depose and say each for himself, that he is a householder and freeholder within the State of New York and is worth the sum of Five Hundred Dollars,

over and above his debts and liabilities and property exempt from levy or sale on execution.

BENJAMIN RHEIN.
THEODORE S. MILLER.

Sworn to before me November 30th, 1915.

[Seal Joseph F. Conran, Notary Public, Kings County.]

JOSEPH F. CONRAN,
Notary Public, Kings County, N. Y.

155 I hereby approve of the foregoing Bond and of its form and sufficiency.

Dated, Washington, D. C., December 4th, 1915.

CHARLES E. HUGHES,
Associate Justice of the Supreme Court of the United States.

O. K.
T. S.

12-8-1915.

156 SIR: Please take notice that the within is a copy of an undertaking duly approved by the Honorable Charles E. Hughes, Associate Justice of the Supreme Court of the United States, on the 4th day of December, 1915, and this day entered and filed in the above-entitled action in the office of the Clerk of the Supreme Court of the State of New York, in and for the County of Kings, in the Borough of Brooklyn and State of New York.

Dated Brooklyn, N. Y., December 8th, 1915.

WILLIAM F. CONNELL,
Attorney for Plaintiff in Error.

16 Court Street, Brooklyn, N. Y.

To Alex. S. Lyman, Attorney for Defendant in Error.

[Endorsed:] Supreme Court of The United States. Lucinda Burton, Plaintiff in Error, against New York Central & Hudson River Railroad Company, Defendant in Error. Copy. Bond on Writ of Error. William F. Connell, Attorney for Plaintiff in Error, 16 Court Street, Brooklyn, N. Y.

157 UNITED STATES OF AMERICA, *ss:*

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the Honorable the Judges of the Supreme Court of the State of New York, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Supreme Court, on a Remittitur from the Court of Appeals of the State of New York, before you, or some of you, being the highest court of law or equity

of the said State in which a decision could be had in the said suit between Lucinda Burton, plaintiff, and New York Central and Hudson River Railroad Company, defendant, a Corporation created under and by virtue of the Laws of the State of New York, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein any title, right, privilege, or immunity
158 was claimed under the Constitution, or any treaty or statute of, or commission held or authority exercised under, the United States, and the decision was against the title, right, privilege, or immunity especially set up or claimed under such Constitution, treaty, statute, commission, or authority; a manifest error hath happened to the great damage of the said Lucinda Burton as by her complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within 30 days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Edward D. White, Chief Justice of the United States, the 4th day of December, in the year of our Lord one thousand nine hundred and fifteen.

JAMES D. MAHER,
Clerk of the Supreme Court of the United States.

Allowed by

CHARLES E. HUGHES,
Associate Justice of the Supreme Court of the United States.

159 [Endorsed:] 1911. No. 2838. 112/278. E. Supreme Court of the United States, October Term, 191-. Lucinda Burton, Plaintiff in error, vs. New York Central and Hudson River Railroad, Defendant in error. Writ of Error. William F. Connell, Attorney for Plaintiff in error, 16 Court Street, Brooklyn, New York. Filed Dec. 8, 1915.

160 STATE OF NEW YORK,
County of Kings, ss:

Clerk's Office of the Supreme Court of the State of New York for the County.

I, Charles S. Devoy, Clerk of the County of Kings and of the Supreme Court of the State of New York for the said County of Kings, by virtue of the annexed writ of error which was served upon me on the 8th day of December, 1915, and in obedience thereto, do hereby certify that the foregoing pages numbered from 1 to 118, inclusive, order of affirmance, order on remittitur and judgment on remittitur contain a true and complete transcript of the records had in said Court in the suit of Lucinda Burton, plaintiff, against New York Central & Hudson River Railroad Company, defendant, mentioned in said writ of error, as the same remain of record and on file in my office, and that annexed hereto is the petition for the said writ of error, the assignment of errors, the citation to the writ of error, with admission of service thereof, copy of original bond filed in my office and said writ of error served upon me.

In testimony whereof, I have caused the seal of said Court to be hereunto annexed at my office in the Borough of Brooklyn, County of Kings, on the 15th day of December, 1915.

[Seal Kings County.]

CHAS. S. DEVOY, *Clerk.*

[United States internal revenue documentary stamp, series of 1914, 10 cents, canceled Dec. 15, 1915.]

161 Supreme Court of the United States, October Term, 1915.

No. 775.

LUCINDA BURTON, Plaintiff-in-Error,
against
THE NEW YORK CENTRAL AND HUDSON RIVER RAILROAD COMPANY,
Defendant-in-Error.

Stipulation.

October Term, 1915.

No. 776.

CORA B. HEERAN, Plaintiff-in-Error,
against
THE NEW YORK CENTRAL AND HUDSON RIVER RAILROAD COMPANY,
Defendant-in-Error.

It is hereby stipulated between the attorneys for the respective parties to the above-entitled actions, that only one record be printed,

and that in the case of Lucinda Burton against the above-named defendant-in-error; and that both of the above cases be heard and argued together upon the record to be printed in the Burton case.

Dated December 29, 1915.

WILLIAM F. CONNELL,
Attorney for Plaintiffs-in-Error.
ALEX. S. LYMAN,
R. A. K.,
Attorney for Defendant-in-Error.
CHARLES C. PAULDING,
R. A. K.,
Of Counsel for Defendant-in-Error.

162 Supreme Court of the United States, October Term, 1915.

No. 775.

LUCINDA BURTON, Plaintiff-in-Error,
against
THE NEW YORK CENTRAL AND HUDSON RIVER RAILROAD COMPANY,
Defendant-in-Error.

Stipulation.

October Term, 1915.

No. 776.

CORA B. HEERAN, Plaintiff-in-Error,
against
THE NEW YORK CENTRAL AND HUDSON RIVER RAILROAD COMPANY,
Defendant-in-Error.

It is hereby stipulated between the attorneys for the respective parties to the above-entitled actions, that only one record be printed and that in the case of Lucinda Burton against the above-named defendant-in-error; and that both of the above cases be heard and argued together upon the record to be printed in the Burton case.

Dated December 29, 1915.

WILLIAM F. CONNELL,
Attorney for Plaintiffs-in-Error.
ALEX. S. LYMAN,
R. A. K.,
Attorney for Defendantin-Error.
CHARLES C. PAULDING,
R. A. K.,
Of Counsel for Defendant-in-Error.

[Endorsed:] 775/25058, 776/25059.

163 [Endorsed:] File Nos. 25,058 and 25,059. Supreme Court U. S., October term, 1915. Term Nos. 775 and 776. Lucinda Burton, Pl'ff in Error, vs. New York Central & Hudson River Railroad Company, Cora B. Heeren, Pl'ff in Error, vs. New York Central & Hudson River Railroad Company. Stipulation that record in No. 776 need not be printed, and that that case abide decision in case No. 775. Filed January 14, 1916.

Endorsed on cover: File No. 25,058. New York Supreme Court. Term No. 775. Lucinda Burton, plaintiff in error, vs. The New York Central & Hudson River Railroad Company. Filed December 23d, 1915. File No. 25,058.

FILED
APR 6 1916
JAMES D. MAHER
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1915—No. 371

LUCINDA BURTON,
Plaintiff-in-Error,

against

THE NEW YORK CENTRAL AND HUDSON RIVER RAILROAD COMPANY,
Defendant-in-Error.

MOTION TO ADVANCE.

WILLIAM F. CONNELL,
Attorney for Plaintiff-in-Error.

CHARLES C. PAULDING,
Attorney for Defendant-in-Error.

THE REPORTER CO., WALTON, N. Y.
New York Office: 253 Broadway, Room 206. 'Phone 675 Barclay.
Brooklyn Office: 375 Fulton Street, Room 62. 'Phone 2260 Main.
1916

Supreme Court of the United States

OCTOBER TERM, 1915.

No. 775.

LUCINDA BURTON,
Plaintiff-in-Error,

against

THE NEW YORK CENTRAL AND HUDSON RIVER RAILROAD COMPANY,
Defendant-in-Error.

Motion to Advance.

Now comes the above-named plaintiff-in-error, and because of the special and peculiar circumstances attending the matters with which this appeal is concerned, and the public interests which are involved therein, moves this honorable Court to advance this case and set the same down for argument at an early date, and it is believed that such question can be satisfactorily argued in one hour, of thirty minutes to each side.

Statement of Matter Involved.

The plaintiff-in-error and her daughter were passengers upon an interstate train of the defendant-in-error, traveling from Franklin, Pennsylvania, to New York City, New York, and while the train was at the station in the City of Syracuse, New York, and the plaintiff-in-error and her daughter were asleep, at midnight, in their berth on a sleeping car of said train, the conductor of the train accompanied two police officers of the City of Syracuse to the berth occupied by plainiff-in-error and her daughter, and informed the police officers that plaintiff-in-error and her daughter occupied said berth. These police officers came to this train without any warrant or process of any kind to arrest plaintiff-in-error and her daughter, claiming that the crime of murder had been committed in the State of Indiana, and they thereupon in the presence of the conductor, other employees of the defendant-in-error, and the passengers on the train, compelled the plaintiff-in-error and her daughter to vacate said berth, to traverse the length of the car to the end thereof, and to stateroom, and there, in the presence of the Pullman porter, were permitted to dress themselves.

At the time plaintiff-in-error and her daughter were compelled to vacate their berth, protection was sought from the conductor of the train by them, proof of various kinds submitted to the police officers and the conductor that plaintiff-in-error and her daughter were respectable persons and not the persons wanted for the commission of crime in Indiana, but plaintiff-in-error and her daughter were not afforded any protection, and when the train arrived at Utica, New York, plaintiff-in-error and her daughter were removed therefrom, placed aboard another train bound for Syracuse, and upon arrival of the train at the latter

place between three and four o'clock in the morning, both were taken to Police Headquarters and there kept in close confinement until the following afternoon at four o'clock, when they were released and permitted to proceed on their way to New York City.

Suit was brought against the defendant-in-error, for its failure to protect plaintiff-in-error and her daughter from the unlawful acts of the police officers, and at the trial it was proven that there was sufficient in number of employees of the defendant-in-error, to repel the police officers, but that instead of doing or saying anything that would or could have safeguarded the persons of plaintiff-in-error and her daughter, they permitted and assisted in the unlawful arrest.

Trial was had in the Supreme Court, Kings County, New York, and judgment was rendered dismissing the complaint of the plaintiff-in-error, which judgment was thereafter affirmed upon appeals to the Appellate Division of said Supreme Court and the Court of Appeals of the State of New York; thereafter there was issued out of this Court a writ of error upon assignment of errors, by Honorable Justice Charles E. Hughes, and the case is now upon the October Term 1915 calendar of this Court for argument.

AS GROUNDS FOR SUCH MOTION, PLAINTIFF-IN-ERROR RESPECTFULLY STATES AND SHOWS AS FOLLOWS:

1. That the questions for the consideration of this Court, are of immediate importance to all persons throughout the United States, and particularly to interstate and international passengers upon trains, steamships and highways, and involves the right to arrest such passengers traveling in an asylum state, upon a charge, without warrant or legal process, that a crime has been commited in a foreign state or country.

2. That the arguments heretofore had in this case upon appeals in the Court of Appeals of the State of New York, and Appellate Division of the Supreme Court, were made and concluded in less than one hour of thirty minutes to each side, and the argument herein can likewise be made and concluded in this Court within said time.

3. That the plaintiff-in-error is upwards of seventy-four years of age, and is now suffering with general debility and has been treated for such illness by physicians, and that in the event of her death before the disposition of this action in this Court, the action herein will abate.

Wherefore, plaintiff-in-error prays that this case may be advanced and assigned for argument on such day as may suit the convenience of the Court.

Respectfully submitted,

William F. Cornell

Attorney for Plaintiff-in-Error.

Sir:

Please take notice; that on the 10th day of April, 1916, at 12 o'clock noon or as soon thereafter as counsel can be heard, the foregoing motion to advance this cause and assign the same for argument, will be submitted to the Supreme Court of the United States.

Dated, Brooklyn, N. Y., April 3rd, 1916.

William F. Cornell

16 Court Street,
Brooklyn, N. Y.,
Attorney for Plaintiff-in-Error.

To:

Charles C. Paulding, Esq.,
Attorney for Defendant-in-Error.

Service of a copy of the foregoing motion to advance and notice of intention to submit same, is admitted this 3rd day of April, 1916.

Charles C. Paulding

Attorney for Defendant-in-Error.

FILED
AUG 11 1916
JAMES D. MAHER
CLERK

Supreme Court of the United States

October Term, 1915.

No. 371

LUCINDA BURTON,

Plaintiff-in-Error,

vs.

THE NEW YORK CENTRAL & HUDSON RIVER RAILROAD COMPANY.

BRIEF OF PLAINTIFF-IN-ERROR.

WILLIAM F. CONNELL,
Attorney for Plaintiff-in-Error.

THE REPORTER CO., WALTON, N. Y.
New York Office: 233 Broadway, Room 38. Phone 678 Barclay.
Brooklyn Office: 375 Fulton Street, Room 63. Phone 3200 Main.
1916

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Supreme Court of the United States

LUCINDA BURTON,
Plaintiff-in-Error,

against

THE NEW YORK CENTRAL AND HUDSON RIVER RAILROAD COMPANY,
Defendant-in-Error.

BRIEF FOR PLAINTIFF-IN-ERROR.

This cause is now before this court upon a writ of error issued by Hon. Justice Charles E. Hughes, to review the judgment of the Court of Appeals of the State of New York, which affirmed a judgment of the Appellate Division of the Supreme Court, Second Judicial Department overruling exceptions ordered to be heard in the first instance, at said Appellate Division, by the Trial Justice, upon denials of motions to go to the jury upon the issues, and for a new trial, made by plaintiff-in-error, at the close of the trial, and directing judgment for defendant-in-error with costs. The Trial Justice dismissed the complaint at the close of the trial, with such directions.

The case of Cora B. Heeren, plaintiff-in-error against the above-named defendant-in-error, No. 776 on the calendar of this court, is by stipulation, to abide the decision in this case.

Statement of Facts.

On May 9th, 1908, the plaintiff-in-error at Franklin, Pa., purchased at that place, of the defendant-in-error, a ticket to New York City, and paid the fare therefor. While on the train at or about Erie, Pa., the plaintiff-in-error purchased from the defendant-in-error a berth in the sleeping car attached to the train. When the train arrived at Rochester about ten P. M., she retired to her berth with her daughter in sleeping car; train proceeding east to New York City. The train arrived at Syracuse, N. Y., about midnight. The train remained in station about ten minutes and then continued en route for New York City.

While the train was at the station in Syracuse, two men came to the berth of the plaintiff-in-error (having been guided there by the conductor of the train), pulled aside the curtains of the berth and flashed bull's eye lanterns in the eyes of the plaintiff-in-error and awoke her. Upon awakening the plaintiff-in-error saw these two men, also the conductor and porter, standing behind them in the aisle of the car (fol. 12 of record).

These two men, who were policemen of Syracuse in civilian attire, in the presence of the conductor and the porter, roughly commanded the plaintiff-in-error's daughter to "get out of their berth." The plaintiff-in-error's daughter demanded to know the reason why she and her mother were molested and no reply coming, they remained in their berth. The plaintiff-in-error's daughter was again told by these two men to "get out of their berth or they would be taken out without any clothes on" (fol. 12 of record). The plaintiff-in-error's daughter again demanded to know why they were molested, and was told again to "get out of their berth"; all this was said in the presence of the conductor and porter.

The plaintiff-in-error's daughter was the first to get out of the berth and these two men, speaking to her, demanded to know who the plaintiff-in-error was. The plaintiff-in-error's daughter informed them that she was her mother. Thereupon these two men, in the presence of the conductor and the colored porter, again commanded the plaintiff-in-error to get out of her berth (fol. 12 of record). Thereupon the plaintiff-in-error left her berth and while standing in the aisle of the car, in the presence of the conductor and porter of the train, they again demanded the reason of their molestation. The plaintiff-in-error then offered to prove that they were from Franklin, Pa. (fol. 14 of record) and submitted proof to that effect; no attention being paid to her proofs the plaintiff-in-error's daughter appealed to the conductor to protect them, he refused (fol. 14 of record); and the plaintiff-in-error and her daughter in undress were forced to the front of the car, carrying their clothing in their hands, in the presence of the conductor and the passengers, who were awakened by the commotion and were directed to dress themselves, which they were obliged to do in the presence of the porter. After dressing, the plaintiff-in-error and her daughter were kept in custody on the car until the train arrived at Utica where they were removed from the train about 2:30 in the morning of May 9th, and taken into the station and forced to await the arrival of the train going back to Syracuse. *And there* (Utica) *for the first time* (see fols. 17, 68 and 69), the plaintiff-in-error and her daughter were told that the plaintiff-in-error's daughter was Mrs. Guiness, of Indiana and was wanted for the crime of murder in Indiana. Many persons in the car of the train and at the station at Utica, hearing of the trouble came up to the scene, stood around, commented upon, and gazed upon the plaintiff-in-error. While at the sta-

tion in Utica, the plaintiff-in-error's daughter fainted, and upon arrival of the train going back to Syracuse, the plaintiff-in-error and her daughter were forced aboard the train, the fares for the party back to Syracuse being advanced by an employee (railroad detective) (fol. 17 of record), of the defendant-in-error. While on the train, the plaintiff-in-error was in the custody of one policeman and her daughter was in the custody of another policeman, on opposite sides of the car (fols. 18, 19 and 44 of record). And while the train was proceeding the same railroad detective entered the car in which the party were travelling back to Syracuse, and approaching the party, said to the policeman in charge of them, "You have got her, she is the one, hold her" (fol. 52 of record), indicating the plaintiff-in-error's daughter.

Upon arrival of the train at Syracuse, the plaintiff-in-error and her daughter were taken to Police Headquarters, and there separated, and each stripped to the skin of all of their clothing, shoes and stockings, their hair also being loosened and taken down and searched, and finally each taken to separate cells filled with drunken and lewd women, locked up and confined there for *fourteen hours*, and then informed that they were at liberty to go on their way to New York City, which they did; leaving the following evening after their arrest and arriving in New York the second morning, May 10th. The plaintiff-in-error, at the time of her arrest was upwards of sixty-five years old, and her daughter was about thirty-three years old.

Neither the plaintiff-in-error or her daughter were ever shown any warrant, or affidavit, or arraigned before any magistrate or judicial officer on any charge information or affidavit filed with any judicial officer against them (fols. 25 and 42 of record).

All these facts were admitted and conceded upon the trial.

There is no dispute as to any material fact, except that the plaintiff-in-error testified that they were never informed of any charge against them, until they were on the train going back from Utica to Syracuse, while the policeman testified that it was at Utica, in the station master's office, that he first informed the plaintiff-in-error's daughter of the charge against her (fols. 68 and 69 of record), *after he had removed her from the train;* and it was admitted upon the trial (fol. 78 of record), and that no claim was made by the police officers that there was any charge of any crime against the plaintiff-in-error; and it was also admitted that no claim was made by the police officers to the conductor of the train, that they (police officers) had come there to arrest the plaintiff-in-error, or that they had any legal process for their arrest. These police officers with the consent of the conductor forcibily compelled the plaintiff-in-error and her daughter to leave the railroad car under arrest (fol. 74), and thereafter confined them in prison. At the trial, no testimony was given, showing that any crime had been committed by any person, or at any place, and at the close of the trial, the justice dismissed the complaints. Plaintiff-in-error duly made a motion to go to the jury upon the issues, also for a new trial, both of which motions were denied by the Trial Justice, who ordered that exceptions thereon be heard in the first instance at the Appellate Division, stating that "the question I think is new in this state" (fol. 90 of transcript of record).

Upon the trial, and in the Appellate Division and the Court of Appeals; it was claimed and urged by plaintiff-in-error, that the arrest, ejectment and imprisonment of herself and daughter, was in violation of Article 4, Sec. 2, Sub. Div. 2 of the Constitution

of the United States, and the Act of Congress 1793, Sec. 5278, R. S., that the arrest and imprisonment without legal process was illegal; that the plaintiff-in-error and her daughter were interstate passengers, and as such were entitled to protection under the Federal law from such manner of arrest; that the police officers were trespassers upon this train, and their actions made them tort feasors; that an active duty rested upon the defendant-in-error to protect by the best of its ability, and by force if need be, the plaintiff-in-error and her daughter from the actions of the police officers; that the defendant-in-error, by permitting and assisting in the actions of the police officers became joint tort feasors and as such liable in damages to the plaintiff-in-error, and her daughter, and that the plaintiff-in-error and her daughter were by the police officers and the defendant-in-error, deprived of their liberty, without due process of law.

THE SPECIFICATIONS OF THE ERRORS RELIED UPON BY THE PLAINTIFF-IN-ERROR, ARE AS FOLLOWS:

First: The Trial Term of the Supreme Court of the State of New York, held in and for the County of Kings, erred in failing and refusing to submit the issues in the case to the jury, as said issues were fully supported by the evidence, and the law applicable thereto.

Second: The Appellate Division of the Supreme Court, held in and for the Second Judicial Department erred, in holding that the arrest of plaintiff-in-error was not unlawful, and that defendant-in-error incurred no liability to plaintiff-in-error by reason thereof, as also did the Court of Appeals of the State of New York, commit error in affirming the said judgment of the Appellate Division of the Supreme Court.

Third: That the Appellate Division of the Supreme Court erred in holding that the arrest of plaintiff-in-error, was not in violation of Article 4, Section 2 of the Constitution of the United States and the Acts of Congress of 1793, and that defendant-in-error was not liable to plaintiff-in-error by reason thereof, as did also the Court of Appeals commit error in affirming said judgment in favor of defendant-in-error and against plaintiff-in-error.

Fourth: The Appellate Division of the Supreme Court, as did the Court of Appeals of the State of New York, committed error in failing to hold, that the right to arrest in New York State, the citizen of another state for a crime committed against the Laws of that other state, is wholly regulated by the Constitution of the United States and Act of Congress of 1793, and that New York State has no authority to cause the arrest of such citizen without first complying with the requirements of the United States Constitution, for New York State does not possess by comity or otherwise the right to detain or arrest the citizen of another state, but that a legal arrest could be made pursuant to the Constitution (Article 4., S. 2, Subdiv. 2) and statute of United States (R. S.) (U. S.) S. 5278, only by virtue of Sections 827-829 of the Code of Criminal Procedure of the State of New York, wherein the process is defined.

Fifth: That the said courts erred in failing to hold that the arrest and detention of plaintiff-in-error was in violation and disregard of the Fourteenth Amendment, Section 1, of the Constitution of the United States.

Sixth: The Appellate Division of the Supreme Court, erred in holding that the acts of the officers in boarding the train of defendant-in-error upon which

plaintiff-in-error was a passenger, by permission of its agents and servants, and arresting plaintiff-in-error, and taking her off the said train without a warrant, or other legal authority were, and each of them was in accordance with law and involved no liability to plaintiff-in-error by defendant-in-error, and the Court of Appeals of the State of New York, committed error in affirming the judgment of said court.

Seventh: That the said courts and each of them, erred in failing to hold, that defendant-in-error was, and is chargeable with knowledge of, and presumed to know the law; that the arrest of plaintiff-in-error was in violation thereof, and its acquiesence, consent and assistance in the unlawful acts complained of rendered it liable as a joint tort feasor, and it is not excusable for either want of knowledge, or ignorance of the law.

Eighth: The said courts erred in failing to hold, that it was the duty of defendant-in-error to protect plaintiff-in-error, who was a passenger on its train against assault, insult and violence not only from its own servants, but also from fellow passengers and strangers; that the acts of the officers were unlawful, that they were trespassers in violation of law, and that defendant-in-error was legally bound to resist their illegal acts and to exercise due diligence to care for the safety of plaintiff-in-error, and that it was wholly immaterial upon the question of defendant's liability that the servant acted in good faith, its failure, neglect and refusal so to do rendered it liable to plaintiff-in-error.

Ninth: That the said courts erred in failing to hold that no matter what incited the servants of defendant-in-error to permit an unlawful act against the plaintiff-in-error, the defendant-in-error is liable for its natural and legitimate consequences.

Tenth: That the said courts erred in failing to hold, that defendant-in-error is responsible to a passenger for a wrong inflicted by an intruder, stranger or fellow passenger, if the conductor or other servant knew, or ought to have known, or ought to have reasonably anticipated that it was threatened, and it could with the assistance of employees and other willing passengers have prevented it, but failed to do so.

Eleventh: The said Courts erred in failing to find, that once the relation of carrier and passenger is entered upon, the carrier is responsible for all consequences to the passenger for the wilful misconduct or negligence of the persons employed by it in the execution of the contract which it has undertaken towards the passenger.

Twelfth: That the arrest of plaintiff-in-error, then a resident of Pennsylvania, innocent of the commission of any crime, without any warrant whatsoever, or other legal authority or demand, while she was a passenger on the train of defendant-in-error in transit in the State of New York, was in violation of the Constitution of the United States, and the Act of Congress of 1793, and failure of the said Courts to so find was error.

Thirteenth: That the failure of the said Courts of the State of New York to hold as aforesaid, was error, and a denial of a right guaranteed to your petitioner under Article 4, Section 2 of the Constitution of the United States and the Act of Congress of 1793, and in violation of the Fourteenth Amendment (Section 1) of the Constitution of the United States, and of the legal and constitutional rights of the plaintiff-in-error.

POINT I.

This appeal raises a constitutional question.

A CLAIM TO A FUGITIVE, IS A CONTROVERSY "ARISING UNDER THE CONSTITUTION OF THE UNITED STATES."

Prigg vs. Commonwealth, 16 Peters, 541.

It is undisputed, in fact admitted, that the arrest and imprisonment of the plaintiff-in-error and her daughter while interstate passengers upon the train of defendant-in-error was based upon the claim that a crime had been committed in the State of Indiana, and the arrest was made at Syracuse, New York, without warrant of the Governor of New York State, or other legal process.

The section of the United States Constitution involved in this controversy is as follows (Article 4, Sec. 2, subdiv. 2):

> "A person charged in any State with treason, felony or other crime, who shall flee from justice and be found in another State, *shall on demand of the executive authority of the State from which he fled*, be delivered up to be removed to the State having jurisdiction of the crime."

Under this, Congress has enacted (see Act of Congress, 1793, Sec. 5278, R. S.):

> "Whenever the executive authority of any State or territory demands any person as a fugitive from justice of the executive authority of any State or territory to which such person has fled, and produces a copy of an indictment found, or of any affidavit made before a magistrate of any State or territory, charging the

person demanded of having committed treason, felony or other crime certified as authentic by the Governor or Chief of Police of the State or territory from whence the person so charged has fled, it shall be the duty of the executive authority of the State or territory, to which such person has fled *to cause him to be arrested and secured* and to cause a notice of the arrest to be given to the executive authority making such demand or to the agent of such authority appointed to receive the fugitive and to cause him to be delivered to such agent when he shall appear."

POINT II.

The several states do not possess original power to arrest non-residents, or their own citizens for crimes committed against foreign states or countries.

The States are limited in their power to arrest and punish all violators of *their* criminal law, committed within their State, whether by their own citizens, or citizens of another state.

Mahon vs. Justice, 127 U. S., 705.

While each State is at liberty to prescribe just such regulations, as suits its own policy, local convenience or feelings, and the legislation of one State be not only different, but utterly repugnant to, and incompatible with that of another State, and may regulate the time, mode and limitation of the remedy, proofs, etc., described in its own State, which may be rejected or disclaimed in another State, yet they must relate solely to matters, not within the exclusive province

of Congress, for when Congress has acted, and by express words prescribed the method for arrest for purposes of extradition, no enlargement of its prescribed methods by any State, will be permitted: the power of Congress in that respect is exclusive.

Sturgis v. Crowenshield, 4 Wheat., 122-193.
Houston vs. Moore, 5 Wheat., 1-21-22.
Mahon vs. Justice, 127 U. S., 705.
Prigg vs. Commonwealth, 16 Peters, 618.

In the case of *Prigg vs. Commonwealth* (*supra*) Mr. Justice Story, writing the opinion of the Court says, at page 617:

> "The provisions of the sections of the Act of Congress of 12th of February, 1793, on the subject of fugitive slaves as well as relative to fugitives from justice, covers both the subjects; not because they exhaust the remedies which may be applied by Congress to enforce the rights, if the provisions shall be found in practice not to attain the objects of the Constitution; *but because they point out all the modes of obtaining those objects which Congress has as yet deemed expedient and proper.* If this is so, it would seem upon just principles of construction, that the legislation of Congress if constitutional must supersede all State legislation upon the same subject; and by necessary implication prohibit it. For if Congress have a constitutional power to regulate a particular thing, and they do actually regulate it in a given manner, and in a certain form, it cannot be that the State legislatures have a right to interfere, and as it were by way of complement to the legislation of Congress, to prescribe additional regulations and what they may deem auxilliary provisions for the same purpose. In such a case, the legislation of Congress in what it does prescribe, manifestly indicates that it does not intend that there shall be any further legis-

> lation to act upon the subject matter. Its silence as to what it does not do, is as expressive of what its intention is, as the direct provision made by it * * * for that the will of Congress upon the whole subject is as clearly established by what it had not declared, as by what it has expressed."

Whenever the terms in which a power is granted to Congress or the nature of the power require that it should be exercised exclusively by Congress, the subject is as completely taken from the States, as if they had been forbidden to act.

> *Sturgis vs. Crowinshield*, 4 Wheat., 122-193.
> *Sherlock vs. Alling*, 93 U. S., 99.

And where Congress has exercised a power over a particular subject given it by the Constitution, it is not competent for State legislatures or State courts to add to the provisions of Congress.

> *Houston vs. Moore*, 5 Wheat., 1-21-22.

Read in the light of the opinion in *Prigg vs. Commonwealth, supra*, the Constitution, and the plain and definite method of procedure, preliminary *before* arrest, defined in the Act of Congress, it follows, that if State legislatures cannot interfere, or prescribe additional legislation, the State courts must apply, and be governed by the Federal law, which was not done in this case, although the plaintiff-in-error at the trial (see fol. 89 of record), and in the Appellate Courts (fols. 105-107 of record), urged that the Federal Statute controlled.

The decisions of the Courts of New York in this case, goes to the extent of deciding, that police officers of that State may without warrant or other legal process of law, arrest interstate passengers travelling through New York State, and hold them in confine-

ment, in anticipation of a demand from a foreign State.

It is plainly evident from the opinion of the Trial Justice (fol. 89), the prevailing opinion of the Appellate Division of the Supreme Court (fols. 105 to 108) and the decision of the Court of Appeals, that they have confused the power of the State officers to arrest for crimes committed against New York State, with the *right* to arrest for crime committed in foreign States, and the duty cast upon the States to arrest and extradiate in the manner defined in the Act of Congress; *and in this case* have lost sight of the fact, that there is no comity between the States, as to arrest and extradition for foreign offenses, and if the decision in this case were carried to its logical conclusion, it would lead to the absurdity, that New York State in the matter of foreign crimes, has the same power as to arrest and extradite to not only foreign States, but also to foreign countries.

It is to be noted that in the Articles of Confederation, the original formulas of same, and the final (present) Constitution, the "demand" for the fugitive, is prerequisite to the arrest and imprisonment.

The Constitution provides that the person charged (by the demanding State) shall be delivered up "on demand of the State from which he has fled." That is all that is said by the Constitution, but Congress has expressly defined how the demand shall be made, by requiring the production of

> "copy of an indictment found or of any affidavit made before a magistrate of any State or territory charging the person demanded of having committed treason, felony or other crime certified as authentic by the Governor or Chief of Police of the State or Territory from whence the person so charged has fled."

All these precedent steps are expressly required by Congress *before* the arrest can be made *legally* in compliance with the Act of Congress.

It is to be noted here, that in *all* the reported cases in the United States Courts, upon the subject of extradition, not one case can be found, wherein the preliminary and precedent proceedings for the arrest had not been made.

If Congress had intended to give to police officers of the various States, the right to arrest without warrant or other legal process, in anticipation of a demand from a foreign State, it would have incorporated such language in the Act, but Congress has on the contrary declined to give such right, by expressly defining the precedent steps necessary before such arrest can be made.

The Act was not passed hastily; it was reported in 1791 and finally enacted in 1793, and in that Congress were many of the leading and most distinguished men of the Constitutional Convention. Many, many cases, and different opinions looking to a solution of the subject of extradition (which had been found in practice under the Articles of Confederation to be unworkable), were communicated to Congress; the original Formulas for the Articles of Confederation, the Articles of Confederation and finally the (present) Constitution itself were before Congress, and all had a full exposition, which finally resulted in the introduction in 1791 of the Act in question, and had there been any intendment of giving to the States, the right to arrest in anticipation of demand, it would have found lodgment in express language in the Act; but there was none such, and the plain and clear language of the Act leaves no room for doubt as to its terms, and the silence of Congress

is as expressive of what its intention is, as the express provisions of the Act made by it.

Prigg vs. Commonwealth, supra.

The spirit as well as the letter of the Act, excludes arrest and imprisonment of the citizens, before a "demand" shall be made, as the liberty of the person is of the highest essence of orderly government, and no abridgement in that respect should be tolerated.

POINT III.

The Laws of the State of New York do recognize the sole power of Congress, on the subject of arrest and extradition of foreign criminals, but the Courts did not apply them to the case at bar.

The Sections of the Code of Criminal Procedure of the State of New York, on the subject in question are as follows.

Section 827:

> *"It shall be the duty of the Governor in all cases where by virtue of a requisition made upon him by the Governor of another State* or Territory, any citizen, inhabitant *or temporary resident of this State, is to be arrested,* as a fugitive from justice, provided that said requisition be accompanied by a duly certified copy of the indictment or information from the authorities of such other State or Territory, charging such person with treason, felony or crime in such State or Territory, *to issue and transmit a warrant* for such purpose to the sheriff of the proper county, or his under

sheriff or in the Cities of this State (except in the City and County of New York, where such warrant shall only be issued to the superintendents or any inspector of police), to the chiefs, inspectors or superintendents of police, and only such officers as are above-mentioned, and such assistants as they may designate to act under their direction shall be competent to make service of or execute the same. The Governor may direct that any such fugitive be brought before him, and may, for cause, by him deemed proper, revoke any warrant issued by him, as herein provided. The officer to whom is directed and entrusted the execution of the Governor's warrant must, within thirty days of its date, unless sooner requested, return the same and make return to the Governor of all his proceedings had thereunder, and of all facts and circumstances relating thereto. Any officer of this State, or of any City, Town or Village thereof, must, upon request of the Governor, furnish him with such information as he may desire in regard to any person or matter mentioned in this chapter.

"2. Before any officer to whom such warrant shall be directed and intrusted shall deliver the person arrested into the custody of the agent or agents named in the warrant of the Governor of this State, such officer must, unless the same be waived, as hereinafter stated, take the prisoner or prisoners before a judge of the Supreme Court or a County Court, who shall, in open Court, if in session, otherwise at chambers, inform the prisoner or prisoners of the cause of his or their arrest, the nature of the process and instruct him or them that if he or they claim not to be the particular person or persons mentioned in said requisition, indictment, affidavit or warrant annexed thereto, or in the warrant issued by the Governor thereon, he or they may have a writ of habeas corpus upon filing an affidavit to that effect, said person or persons so arrested may, in writing,

consent to waive the right to be taken before said Court or a judge thereof, at chambers, such warrant or waiver shall be witnessed by the officer intrusted with the execution of the warrant of the Governor and one of the judges aforesaid or a counselor at law, of this State and such waiver shall be immediately forwarded to the Governor by the officer who executed said warrant. If, after a summary hearing as speedy as may be consistent with justice, the prisoner or prisoners shall be found to be the person or persons indicted or informed against and mentioned in the requisition, the accompanying papers and the warrant issued by the Governor thereon then the Court or judge shall order and direct the officer intrusted with the execution of said warrant of the Governor, to deliver the prisoner or prisoners into the custody of the agent or agents designated in the requisition and the warrant issued thereon as the agent upon the part of such State, to receive him or them, otherwise to be discharged from custody by Court or judge.

"If, upon such hearing, the warrant of the Governor shall appear to be defective or improperly executed, it shall be by the Court or judge, returned to the Governor, together with a statement of the defect or defects, for the purpose of being corrected and returned to the Court or judge, and such hearing shall be adjourned a sufficient time for the purpose, and in such interval, the prisoner or prisoners shall be held in custody until such hearing be finally disposed of.

"3. It shall not be lawful for any person, agent or officer, to take any person or persons out of this State, upon the claim, ground or protest that the prisoner or prisoners consent to go, or by reason of his or their willingness to waive the proceedings aforedescribed, and any officer, agent, person or persons, who shall

> procure, incite or aid, in the arrest of any citizen, inhabitant or temporary resident, of this State, for the purpose of taking him or sending him to another State, without a requisition first duly had and obtained and without a warrant duly issued by the Governor of this State, served by some officer as in this section provided, and without, except in case of waiver in writing as aforesaid, taking him before a Court or judge as aforesaid, unless in pursuance to the provisions of the following sections of this chapter, and any officer, agent, person or persons, who shall, by threats or undue influence, persuade any citizen, inhabitant or temporary resident, of this State to sign the waiver of his rights to go before a Court, or judge as hereinbefore provided, or who shall do any acts declared by this chapter to be unlawful, shall be guilty of a felony, and upon conviction be sentenced to imprisonment in a State Prison or penitentiary for a term of one year. Any willful violation of this act of the above-named officers shall be deemed a misdemeanor in office."

And the Courts of New York State have *formerly* been quick to give full recognition to the Constitution of the United States and Act of Congress above.

> *People vs. Curtiss,* 50 N. Y., 331.
> *People vs. Hyatt,* 172 N. Y., 182.
> *Matter of Rutter,* 7 Abb. Pr. Rep., 67.

In the Curtiss case (50 N. Y., 331), the facts were as follows:

One Carl Vogt was, on May 25th, 1872, in the custody of the Warden of the City of New York, upon a commitment to answer to an indictment for grand larceny.

While so imprisoned, the Minister of Belgium made requisition upon the Governor of New York State for the extradition of Vogt, charging Vogt with murder,

arson and robbery in Belgium; the Governor issued his warrant under the provisions of the laws of New York State of 1822, to the sheriff of New York County, reciting the proof, etc., of the Act of 1822, and directing the sheriff to deliver Vogt to the representatives of the Belgium Government to the end that he be taken there to be tried for his crimes.

Vogt obtained a habeas corpus, upon the hearing of which he was discharged upon the Governor's warrant and remanded to the Warden of the City Prison.

And the Court says, page 324:

> "The warrant of the Governor was issued under and in pursuance of a statute of this State passed in 1822 (R. S., 468, 5th edition), providing for the surrendering of fugitives from justice from foreign countries. The question involved is whether this statute is a violation of the Constitution of the United States. * * * (Page 331), Vogt is to be surrendered under the act upon the demand only of the authorized minister of the foreign power, and not because he is unworthy of our hospitality. The Governor in issuing the warrant acted under the authority of the statute and had no power to act otherwise. He did not and could not exercise the police power invoked in this case *without law*, and, as we have seen, the Legislature has not exercised it, and it is, therefore, unnecessary to discuss what power the Legislature possesses in that direction.
>
> "It is urged that Vogt is a great criminal and ought to be punished. If he has been guilty of the offense laid to his charge, of murder, robbery and arson, justice to him and protection to the community, demand his conviction and punishment. But, however much we may regret the result on this account, we are more than compensated by the reflection that the escape of a single felon from the punishment due to his crimes, *is an insignificant*

> evil compared with the consequences which may flow from sanctioning a violation of the Constitution of the United States."
>
> All concur.

This case and the principles therein stated, was followed by numerous cases right down to the case of *People vs. Hyatt*, 172 N. Y., 182, which says:

> "No person *can* or should be extradited from one State to another State *unless the case falls within the constitutional provision*, and that the power which independent nations have to surrender criminals to other nations as a matter of favor *or comity is not possession by the States.*"

It therefore follows that as the Governor of this State had no power to arrest, or cause the arrest, of the appellants *without first having a demand made upon him for their arrest* (there being no crime committed against the laws of New York State), no police officer or other person had or have any such right and their presence upon the train was in the capacity of individuals as trespassers merely, for they were there without any power or right whatever, but going on the train in the dead of night with the full knowledge and consent of the conductor, and being allowed by him and with his full consent, to *"interview,"* interfere with and remove the plaintiff-in-error made the defendant-in-error a joint tort feasor and liable for all the damages sustained by the plaintiff-in-error.

This is a proposition of the law so well known that a citation of authorities would be superfluous.

"Arrest" is but an incident of extradition, just as "Interest" is, but an incident of principal and if extradition cannot be exercised, except in the manner provided for by the Constitution of the United States and the Acts of Congress, so also, the lesser right

(arrest) cannot be exercised without compliance with the Constitution and Laws of the United States.

If Congress intended giving to the States and their police officials the right to *arrest* non-residents, independent of, or to anticipate compliance with, the provisions of the Constitution or the Act of Congress (which it has not), it would have been very easy to have incorporated such right of arrest into the present Act of Congress, but Congress has not done such, but on the contrary, has expressly prescribed a condition precedent before an "arrest" can be made, namely, the finding of an indictment, requisition of Governor of demanding State, etc.

The object of a written constitution is to regulate, define and limit the powers of government.

Congress, by defining the express prerequisite requirements for arrest, has thereby expressly prohibited anything else.

> "Its (Congress), silence as to what it does *not* do is as expressive of what its intention is as the direct provisions made by it * * * for that the will of Congress upon the whole subject (extradition), is as clearly established by what it had *not* declared, as by what it has expressed."
>
> *Prigg vs. Commonwealth*, 16 Peters, 618.

The alleged crime for which plaintiff-in-error and her daughter were arrested, was alleged to have been committed in Indiana, the exercise of any duty in respect thereto by the State of New York could only arise when such duty was cast upon it (New York State), by virtue of the requirements of the Act of Congress having been complied with *previous* to the arrest.

True it is that custom and a most pernicious unlawful custom among police officials throughout the

United States has disregarded the procedure defined in the Act of Congress and in its stead have erected and enforced their own procedure, as is evidenced in the case at bar.

> "The habit, which is by a very singular abuse of language called official courtesy, of making illegal arrests in one jurisdiction, in the hope that similar violations of law may be reciprocated is one which cannot be tolerated. The law places private liberty at a much higher value than official favors, and violation of law by those appointed to protect instead of destroy private security, deserve no favor. Fundamental rules of constitutional immunity cannot be relaxed."
>
> *Malcolmson vs. Gibbons,* 56 Mich., 464, 465.

How strangely different and logically correct is the above opinion to that of the prevailing opinion in the case at bar, which paid no attention to the fundamental rules of constitutional requirements.

> *People vs. Howland,* 155 N. Y., 282.

The law of New York State, Sec. 827 C. C. P., Subdiv. 3, makes it a crime to illegally extradite and hence any acts intended for that purpose are unlawful and render all those engaged or consenting to such acts lawbreakers.

The defendant cannot claim that the police officers were acting by virtue of any authority.

> "When the Act * * * is of such nature that (his) the office gives him no authority to do it, it cannot be said the act was done *'virtue offici.'* "
>
> *Phillips vs. Leary,* 114 App. Div., 872.
> *State vs. Conover,* 28 N. J. Law, 228.

The distinction is clear between acts done *virtue officii* and *colori officii;* that is, between the acts done

by virtue of office (or legal authority), and acts done under mere color of office and without legal authority.

In the first of the above cases there is no doubt that if the police officers went aboard the train seeking whom they believed had committed a felony *against the laws of the State of New York* although no felony had in fact been committed, and had mistakenly arrested the appellants, in the manner testified; while the arrest would be wrong, yet, neither the railroad or the police officers would be liable because the actions of the police officers would be official acts done in virtue of their office and under the authority which they possessed and had the right to exercise, even if they had irregular process and they arrested the wrong persons, and this same principle applies not only to police officers, but to the sheriffs in the exercise of their duties and in fact to any other public official having similar duties to perform.

The cases of *People vs. Schuyler*, 4 N. Y., 173; *Murphy vs. Callan*, 69 App. Div., 413, are illustrative of the above proposition.

But where, as in the case at bar, the officers *had no authority* and could have no authority to arrest persons alleged to have committed a crime against *another* State, and such persons coming from that other State, without first complying with the provisions of the Constitution of the United States and the Act of Congress and the Laws of the State of New York, such police officers' acts would be those of trespassers and would render them tort feasors.

Phillips vs. O'Leary, 114 App. Div., 871.

In *State vs. Conover*, 28 N. J. Law, 228, and 78 *Am. Dec.*, 54, the Court, referring to liability for acts done *colori offici*, said:

> "In such case, the officer is guilty of a tort for which 'he is liable to the party injured.'"

And in the same case defined acts done *colori officii* as "unofficial acts committed under color of office, such as cannot be done and cannot be justified by the official character of the sheriff or by any process in his hands," citing *Seeley vs. Birdsall,* 15 Johns., (N. Y.), 267; *Alerck vs. Andrews,* 2 Esp., 540 and *People vs. Schuyler,* 2 Coms., 187.

The defendant railroad was and is chargeable with knowledge of the law, and its acquiescence, consent and assistance in the acts of these men rendered it liable as a joint tort feasor because its plain duty was to protect its passengers from unlawful interference.

It does not appear from the record that any known person of anywhere, either in the State of New York or elsewhere was anywhere charged with any crime either felony or misdemeanor for which this plaintiff-in-error was taken from this train other than in the newspapers or the minds of the alleged police officers; there is no claim or charge that any crime was committed in or against the Laws of the *State of New York.*

When the Code of Criminal Procedure, by Sections 163 and 177, speaks of the right of police officers to arrest, it means *they can only arrest for crimes committed against the Laws of the State of New York* and the defendant is presumed to know this as well as any person.

The States have no interest in the arrest or punishment of offenders against the Laws of other States.

> *People vs. Hyatt,* 172 N. Y., 182.
> *Malcolmson vs. Gibbons,* 56 Mich., 460.

And no law has as yet been enacted, either in New York State or elsewhere which gives the right to police officers or others to *"interview"* interstate or local passengers at midnight in their berths.

Public policy does not require or sanction unlawful acts done under the guise of law; to maintain such a view, would lead to anarchy.

Does the mere refusal of defendant-in-error's employees to physically co-operate with these alleged police officers, exempt the defendant-in-error from its duty to actively protect the plaintiff-in-error against the unlawful violation of their rights?

The defendant-in-error owed an *active* duty to protect its passengers.

POINT IV.

It was the duty of the defendant to protect its passengers against assault, insult, violence, etc., not only from its own servants, but also from fellow passengers and strangers.

Wood (Law on Master and Servant), page 641.
Hutchinson on Carriers, Sections 595 and 596.
Thompson on Negligence, Section 3186.
Patterson on Railway Law, Section 214.
Wood on Railway Law, Section 1046.
Gillespie vs. Brooklyn Heights R. R. Co., 178 N. Y., 347.
Dwinelle vs. N. Y. C. & H. R. R. Co., 120 N. Y., 117.
Stewart vs. Brooklyn & Crosstown R. R., 90 N. Y., 588.
Thorpe vs. N. Y. C. & H. R. R. Co., 76 N. Y., 402.
Parsons vs. N. Y. C. & H. R. R. Co., 113 N. Y., 355.

And no matter what the matter is which incites the servant of the defendant to *permit an unlawful act*

against the plaintiff, the defendant is liable for its natural and legitimate consequences.

McLeod vs. N. Y. Chic & St. Louis R. R. Co., 72 App. Div., 116.
Dwinelle vs. N. Y. C. & H. R. R. Co., 120 N. Y., 117.
Neito vs. Clark, 1 Cliff., 145.
Commonwealth vs. Power, 7 Metc., 596.
Goddard vs. Grand Trunk R. R. Co., 57 Me., 202.
Craker vs. N. W. R. R. Co., 36 Wisc., 657.
C. & E. R. R. Co. vs. Flexman, 103 Ill., 546.

POINT V.

The appellant being a passenger, the defendant owed her an active duty and was bound to exercise due diligence to care for her safety.

Rogers vs. Vicksburgh R. Co., 194 Fed. Rep., 65.
Wells vs. N. Y. C. & H. R. R. Co., 25 App. Div., 365.
Willis vs. Long Island R. R. Co., 34 N. Y., 669.
Flint vs. Norwich Trans., 34 Conn., 17.

"Once the relation of carrier and passenger is entered upon, the carrier is responsible *for all consequences* to the passenger for the willful misconduct or *negligence* of the persons employed by it in the execution of the contract which it has undertaken towards the passenger."

McLeod vs. N. Y. Chic. & St. Louis R. R. Co., 72 App. Div., 116.
Willis vs. Metropolitan Street R. R. Co., 76 App. Div., 344.

Guy vs. N. Y. Ontario & Western R. R. Co., 30 Hun, 399.
Hamel vs. N. Y. & B. F. Co., 6 N. Y. Supp., 102 affirmed, 125 N. Y., 707.

And it is wholly immaterial upon the question of defendant's liability, that the servant acted in good faith.

Hamilton vs. T. A. R. R. Co., 35 N. Y., 25.

Here is a complete test as to the defendant's liability. Could the appellants have lawfully resisted the officers in this instances and if *they* could *lawfully* resist, was it not the duty of the defendant to have resisted the officers and protect their passengers to the utmost of their power?

The case of *People vs. Shanley*, 40 Hun, 477, is instructing and illustrative as to the rights and legality of the appellants resisting an unlawful arrest. In that case one Knapp, a police officer of Lansingburg attempted to arrest the defendant Shanley, for a misdemeanor not committed in the presence of the police officer; but, a warrant for Shanley's arrest was at the time, in the office of the Chief of Police; Shanley knew that such warrant had been issued, and also knew that Knapp was a police officer and when the police officer attempted to arrest him, he (Shanley) resisted the officer and injured him to such extent that Shanley was indicted for assault upon him in the second degree, was tried and convicted of the assault, but upon appeal by Shanley, the judgment and conviction was reversed and Shanley discharged.

Commonwealth vs. Crotty, 10 Allen (Mass), 404 and 405, was a case where the defendant was indicted and convicted for a riot in resisting arrest and upon appeal the conviction was reversed and the Court says, page 405:

> "The warrant being defective and void on its face, the officer had no right to arrest the person on whom he attempted to serve it on, he acted without warrant and was a trespasser, the defendant whom he sought to arrest had a right to resist by force, using no more than was necessary to resist the unlawful acts of the officer, an officer who acts under a void precept and a person doing the same act, who is not an officer, stand on the same footing *and any third person may lawfully interfere to prevent an arrest under a void warrant* doing no more than is necessary for that purpose."
>
> *1 Chit. Crim. Law*, 44
> *Elk vs. United States*, 177 U. S., 535.

The above cases show clearly that the appellants in this case would have been justified in resisting the police officers and by parity of reasoning and also by virtue of Section 1055, Sub. Div., 3-1 of the Penal Law of the State of New York, the defendant railroad would have been excused for any violence committed in its efforts to protect the plaintiffs against the acts of the police officers, if such they could be called.

Wood on Master and Servant, at pages 648 and 649, says:

> "If carrier of goods for hire should commit the carriage of goods to a servant, and the servant should steal them, or wantonly destroy them, or through his negligence injure or suffer them to be injured, there is no question but that the master would be liable therefor, *and it would be a singular rule, and an absurd one, that did not hold the carriers of passengers, intrusted not only with their comfort, but the safety of their person, and their lives, during the journey, to as strict performance of this duty as of the other,* and it will be seen by an examination of the cases that they are. They are bound to look out for the comfort of their passengers, and, as far as possible, save them from annoyance."

Nickey vs. St. Louis, etc., Ry., 35 Mo. App., 79, was a case where the plaintiff had delivered eight mules to the defendant for transportation on its trains. The conductor in charge of the train on demand of a deputy sheriff delivered the mules to him, the only authority the deputy sheriff had was the following telegram:

> "City Marshal:
>
> "Stop eight mules on local going east, belonging to L. F. Nickey. Will be on next train with attachment.
>
> HENRY TURNER, Sheriff,"

and the above Court in holding the defendant liable, says, at page 85:

> "A common carrier is excused from delivery of goods when they have been seized under *legal* process and it makes no difference by and against whom the process is issued. * * *. But the carrier must show that the goods were taken by *due legal process according to the law* of the land. Hutchinson Carriers, Sec. 398.
>
> "If he surrenders the goods under any other circumstances he is guilty of negligence and is not protected * * * by surrendering the property to a person or officer not authorized to attach and who at the time of the seizure had no writ from any Court of competent jurisdiction authorizing the act, the carrier would be guilty of negligence either as a matter of law or fact or both."

And in *Kiff vs. Old Colony Railroad*, 117 Mass., 591, it was held that it was no defense to a railroad who had permitted plaintiff's goods to be removed from its train by an invalid writ of attachment; that it (defendant) had supposed the attachment by the sheriff to be valid.

A carrier is not relieved from the duty of delivering goods, even when he delivers in response to legal process on demand of a levying officer, unless he has

exercised due diligence to ascertain whether the process is in fact legal.

> *Georgia Southern & F. Ry. Co. vs. Knight,* Ga., 75 S. E., 823.

And using the language of *Wood on Master and Servant* at pages 648 and 649, *what can be said* about the unlawful assault and removal of the plaintiff-in-error by the consent and active assistance of the defendant-in-error *without any legal process of any kind.*

Surely the protection and security of the passenger is away and beyond and superior to the obligation a railroad owes to protect the goods of its shippers.

POINT VII.

Now it being seen that the arrest of the appellants was unlawful, it makes no difference that the police officers were neither servants or employees of the defendant as was said in McLeod case, supra:

> "Had Wilkinson (railroad detective) *been an entire stranger* instead of an employee of the road and had he with the assent and with the concurrence or by the direction of the conductor removed the plaintiff from the train, the same question would be presented (the violation of the defendant's contract to carry the plaintiff safely to her destination), and it is for the *Jury* to determine whether the defendant has violated its contract to carry the plaintiff safely to her destination."
>
> *McLeod vs. N. Y., Chic. & St. Louis R. R. Co.,* 72 App. Div., 116.

And in *Dwinelle vs. N. Y. C. & H. R. R. Co.*, 1[illegible] N. Y., at page 127:

> "As we have seen, the defendant owed the plaintiff the duty to transport him to New York, and during its performance to care for his comfort and safety. This duty of protecting the personal safty of the passenger and promoting by every reasonable means the accomplishment of his journey is continuous and embraces other attentions and services than the occasional service required in giving the passenger a seat or some temporary accommodation. Hence whatever is done by the carrier or its servants which interferes with or injuries the health or strength or person of the traveler, or prevents the accomplishment of his journey in the most reasonable and speedy manner, is a violation of the carrier's contract and he *must he held responsible for it.*"

POINT VIII.

The defendant had the power of refusing to receive and to expel any one who interferes with the comfort, safety and convenience of its passengers and it may exercise all necessary powers and means to so eject persons, and it is bound to exercise these powers, and if this duty is neglected, the carrier is liable to the passengers for all the consequences.

Moore on Carriers, 1906 Ed., page 641.
Carpenter vs. Boston R. R., 97 N. Y., 494.
Putnam vs. B'way R. R., 50 N. Y., 108.

Koch vs. Brooklyn Heights R. R., 75 App. Div., 282.
Pittsburg R. Co. vs. Huids, 53 Pa. St., 512.
Flint vs. Norwich, Etc., 34 Conn., 17.
Mullen vs. Wisc. Cent. Co., 46 Minn., 474.
Spohn vs. Missouri Pac. R. R., 87 Mo., 74.
Weinegan vs. Central Pass. E. Co., 85 Kentuckey, 547.
Gillegan vs. Ohio River R. Co., 35 W. Va., 588.

A carrier has the power of refusing to receive a passenger, or to expel any one who is drunk, disorderly or riotous, or who so demeans himself as to endanger the safety or interfere with the reasonable comfort and convenience of other passengers, and may exercise all necessary power and means to eject from its conveyance, any one so imperilling the safety of, or annoying others, and this police power the conductor or other servant of the company in charge of the vehicle is bound to exercise with all the means he can command when ever occasion requires. If this duty is neglected without good cause, and a passenger receive injury, *which might have been reasonably anticipated or naturally expected,* from one who is improperly received or permitted to continue as a passenger, the carrier is liable.

Moore on Carriers, 1906 Ed., page 641.
Carpenter vs. Boston R. R., 97 N. Y., 494.
Putnam vs. B'way R. R., 50 N. Y., 108.
Koch vs. Brooklyn Heights R. R., 75 App. Div., 282.
Pittsburg R. Co. vs. Huids, 53 Pa. St., 512.
Flint vs. Norwich, Etc., 34 Conn., 17.
Mullen vs. Misc. Cent. Co., 46 Minn., 474.
Spohn vs. Missouri Pac. R. R., 87 Mo., 74.
Weinegan vs. Central Pass. E. Co., 85 Kentucky, 547.
Gillegan vs. Ohio River R. Co., 35 W. Va., 588.
3 St. Ry. Rep., 783.

The carrier must exercise the highest diligence reasonably practicable, to protect passengers from assault, abuse or injury at the hands of fellow passengers or third persons, and the carrier is responsible to a passenger for a wrong inflicted by an intruder, stranger or fellow passenger, if the conductor or other servant know or ought to have known, or ought to have reasonably anticipated that it was threatened or was reasonably to be apprehended, and it could with the assistance of employees and other willing passengers, have prevented it, but failed to do so.

Moore on Carriers, page 642.
Georgia, Savannah, Etc. R. Co. vs. Boyle, 115 Ga., 836.
Holly vs. Atlanta R. R. Co., 61 Ga., 215.
Indiana, Louisville, Etc. Ferry Co. vs. Nolan, 135 Ind., 60.

The defendant-in-error had a train crew amply sufficient to have expelled these men, or to prevent their entry upon this train.

POINT VI.

An arrest can be lawfully made without a warrant only in the State where the crime is committed.

Malcolmson vs. Gibbons, 56 Mich., 459.
State vs. Shelton, 79 N. C., 695.
State vs. Andrews, 1 Hill (S. C.), 327.

And to enable a Magistrate to arrest and examine an alleged fugitive from another State, it must be shown by a *complainant* in writing, on oath, that a crime has been committed, that the accused has been charged in that other State with the commission of the

crime, and that he has fled therefrom, and is found here.

Re Le Land, 7 Abb. Pr. Rep., 67.
People vs. Brady, 56 N. Y., 182.
Draper vs. Pinkerton, 77 N. Y., 245.
People vs. Donohue, 84 N. Y., 442.
Comm. of Kentucky vs. Dennison, 24 U. S., 104.
Roberts vs. Riley, 116 U. S. (leading case).

And there must be a charge of crime existing against the alleged fugitive in the State demanding his surrender before the demand can legally be made, and it must be made in the regular course of judicial proceedings.

Comm. of Kentucky vs. Dennison, 24 U. S., 104.
Malcolmson vs. Gibbons, 56 Mich., 459.

And in the case at bar, no proof was given showing or tending to show that any crime was committed by any person anywhere or that such a person as a Mrs. Guiness existed.

Mr. Justice Kapper, in dismissing the complaints, cites *Hutchinson on Carriers,* Vol. 2, Sec. 937, which says:

> "The carrier is not required to resist an officer of the law who has *apparent authority* to arrest a passenger, nor is he under any duty to inquire into the legality of the arrest, or to see that the officer uses only such force as is necessary to make the arrest.
>
> *"If he has notice that the arrest is wrongful, it would be his duty to make inquiry into the matter and if justified to interfere,* but where the arrest is by officers of the law and is apparently regular and there is nothing to put the carrier on notice that the arrest is illegal, the carrier will not be bound to interfere with the officer and prevent the arrest, having a right to

> presume that the arrest is legal, that he is obeying his commanding officer, and that there is no breach of duty to the passenger."

The Trial Judge misconstrued the author's conclusion as to what the law is.

Where was the "apparent authority" of these police officers to have arrested the plaintiffs?

Neither the Governor of the State of New York or any Supreme Court Justice or any other official had any authority to impede the transit of these plaintiffs-in-error, without first complying with the requirements of the Constitution of the United States, and if neither the Governor of the State or any Justice of a Court could interfere with the passage of the plaintiffs-in-error, how could mere common policemen be vested with power to do so?

To say that a mere metal badge upon the breast of an individual invests him with *"apparent"* authority to do an unlawful act is absurd.

Hutchinson says:

> "If he (carrier) has notice that the arrest is wrongful it would be his duty to make inquiry into the matter and if justified to interfere."

Here is where the test question as to the defendant-in-error's liability comes in, as stated at page 28 of this brief, namely, could the plaintiffs-in-error have lawfully resisted the officers in this instance, and if *they* (the plaintiffs-in-error) could have lawfully resisted, was it not the duty of the defendant to have interfered in their behalf and to have resisted the officers and protect their passengers to the utmost of their power? The answer to this question will very largely determine these cases.

Under the decisions of *People vs. Shanley, Commonwealth vs. Crotty and Elk vs. United States, supra,* there can be no doubt of their right so to do, and

it must be borne in mind that the defendant-in-error had a train crew of eight or ten persons, including its station employees, which were amply sufficient to expel the officers (fol. 59 of record).

It cannot be doubted in this case but that under the Constitution and Laws of the United States, these plaintiffs-in-error would have been lawfully entitled to resist interference or arrest by these alleged officers and measured by that same right which the plaintiffs-in-error had, was it not the *duty* of the defendant-in-error to have enforced that right in their behalf instead of acquiescing in the acts of these men?

This the defendant-in-error easily could have done with its train crew.

And if it be claimed that the defendant-in-error was innocent of any wrong-doing (as were the plaintiffs-in-error) should not the one (defendant) who has been negligent in its duties be liable for such negligence?

Certainly the Constitution of the United States and the Acts of Congress are entitled to respectful consideration and obedience, and, as the manner of arrest is *solely* provided therein, just as the statute of this State provides by the Penal Code and the Code of Criminal Procedure, for the arrest of those committing crimes *against the Laws of the State of New York,* no authority, *"apparent"* or otherwise, could exist that would countenance interference with the plaintiffs-in-error, this the defendant-in-error is chargeable with knowledge thereof; and as between the defendant-in-error and plaintiffs-in-error, the defendant-in-error being negligent of its plain duty to protect its passengers renders it liable. The authority of police officers to make arrests is defined by the Laws of the State of New York and this the defendant-in-error is chargeable with knowledge thereof. It would be a curious anomaly of the law that a police

officer or the possessor of a metal badge has greater power than the written Constitution of the United States.

The theory of Mr. Justice Kapper that public policy requires that persons be arrested at the whim or caprice of police officers, without authority, or that criminals may make a haven of refuge in this State, has been long ago exploded by the Courts of New York.

People vs. Curtiss, 50 N. Y., 331.
People vs. Hyatt, 172 N. Y., 176.

And again, where Mr. Justice Kapper says in his opinion (fol. 89 of record).

> "I think that any police officer would have a right having reasonable ground to believe that a criminal was in his presence, to hold him to await extradition papers."

How different from the plain words of the *United States Constitution* and the *Act of Congress, Commonwealth vs. Crotty, People vs. Shanley, Elk vs. United States, Malcolmson vs. Gibbons*, and the decision in *Matter of Le Land*, 7 Abb. Pr. Rep., 67, which says:

This affidavit is defective in all these particulars:

> "It does not show positively that a crime has been committed in Pennsylvania. It does not show that any proceedings have been 'taken in law against him in that State,' and only says that he is a fugitive from justice. It might be inferred from the affidavit that a crime has been committed in Pennsylvania, but mere inference is not sufficient on which to found the exercise of criminal jurisdiction.
>
> "I am requested by the District Attorney to hold on to the person until the proper documents come from Pennsylvania, or until they are procured from the Governor of that State. This I cannot do. This Court, although its

Judges possess all the powers of committing magistrates, has always refrained from doing so, unless in very rare and exceptional cases and I do not deem this as falling within that exceptional rule.

"The prisoner must be discharged."

And *Matter of Rutter*, 7 Abb. Pr. Rep., page 69, where Judge McCann says:

"By the Constitution of the United States, as well as of the State of New York, 'no person shall be deprived of life, liberty or property *without due process of law.*' Now, here the party is held without any process, his detention is illegal, and I have no discretion but to discharge him. But the district attorney, conceding that the prisoner is held without warrant of law, asks that I detain him until a mandate arrive from the Governor of New York. Anxious as I am to facilitate the administration of justice in a sister state, I cannot act in violation of my official obligations. The statutes of New York make it my imperative duty to discharge the prisoner, and if I should detain him a single moment, I would not only contemptuously defy the Constitution of the United States and of the State of New York, but would disregard my official duty, and set an example of lawless invasion of personal injury, which would justly expose me to public animadversion and punitive chastisement. Happily, the people of New York do not live under the arbitrary system of government prevalent in other countries; but in a land of law, where the right of the citizen, and, above all, the right of personal liberty, are protected, from invasion by the strongest securities, and the most formidable sanctions.

"No matter how humble or how reprobate the man may be, he is exempt from arrest except by 'due process of law.' Indeed, I am conscious of having dealt already too hardly with the prisoner. He was brought before me

> Tuesday, and at the instance of the District Attorney, I remanded him until Thursday, that the District Attorney might have an opportunity of preparing a return to the writ. Probably it was then the right of the prisoner to be discharged, nothing being shown to justify his detention. Thursday the prisoner was again before me, and with him came a return to the writ. The return was confessedly insufficient to authorize his imprisonment; but, solicitous, it may be unduly solicitous, to prevent the escape of a possible criminal, I again accorded the District Attorney twenty-four hours within which to file an amended return. I can hardly doubt but my duty was then to discharge the prisoner. Considering these things, and that he has already been imprisoned a week without the least pretense of justification, I cannot consent to detain him another moment in illegal custody. The District Attorney suggests a warrant from the executive will arrive for the arrest and surrender of the prisoner. Very well, *under that* let him be taken and detained, and, if there be apprehension of his escape meanwhile, upon a proper affidavit, process for his arrest may be procured, and he may be held for extradition to Tennessee. For myself, I cannot longer be a party to his illegal imprisonment.
>
> "Let the prisoner be discharged."

And if the Court had no authority "apparent" or otherwise, how or where could ordinary police officials acquire "apparent" authority?

> "The habit, which is by a very singular abuse of language called official courtesy of making illegal arrests in one jurisdiction in the hope that similar violations of law may be reciprocated, is one which cannot be tolerated. The law places private liberty at a much higher value than official favors; and violations of law by those who are appointed to protect instead of destroy private security, deserve no favor.

> Fundamental rules of constitutional immunity cannot be relaxed."
>
> *Malcolmson vs. Gibbons*, 56 Mich., 464, 465.

Hutchinson (*supra*) does not in any way conflict with the argument made herein; on the contrary, he expressly recognizes that where an officer *is fortified with process or authority*, then and in that event a railroad would be exempt from liability, although the process might not apply to the person arrested or would be illegally issued or be defective; but what about the case at bar, where no authority, apparent or otherwise, existed?

As an evidence of the absolute unlawful invasion and arrest of the plaintiff-in-error, it will repay a reading of the testimony given by the defendant-in-error's witnesses Niess, Donovan and Nowlan.

Officer Niess testified as follows (fol. 70 of transcript of record):

> "What was done with the two women, was, their names were taken and then taken upstairs in the matron's room. I went up with them." (Police Station.)
>
> "By the Court:
>
> "Q. What was the mother's name taken for, what was she taken upstairs for? A. She volunteered to go along.
>
> "Q. You just said here is the two women to the lieutenant. What was she taken for? A. She volunteered to go along.
>
> "Q. Did she volunteer to be searched? A. All people are searched when they are brought into the station house.
>
> "Q. Even when they go along as a friend? A. Yes, sir.
>
> "By Defendant's Counsel:
>
> "I say they went upstairs. I did not go upstairs with them or Officer Donovan. I did

not see them again. With respect to Mrs. Burton going with me, I did not tell her at any time that I wanted her to go along with Mrs. Heeren."

And at folio 74:

"They (plaintiffs) finally got some clothing on in their berths. When I got down to the railroad at Utica, *Donovan took hold of Mrs. Burton, walked in with her to the station and I took Mrs. Heeren.*"

And the other alleged policeman, Donovan, testified as follows (fol. 76 of record):

"I saw them go to the stateroom. Both the ladies were pretty near full dressed at that time. Now, I couldn't say I went ahead. I don't just remember what position I occupied. I think I carried the suit case. I think I was behind both ladies, too, if I am not mistaken. * * * We went out, I think out to the train and went into the train with them. I sat down with the eldest lady and she next to the window."

And Nowlan, the conductor, testified as follows (fol. 80 of record):

"When the train stopped at Syracuse, I was on the rear platform of the day coach connecting with car number one. I met officer Neiss and Officer Donovan; when I stepped off from the step they got on to the platform at Syracuse they were there, they asked me for car one, and I said, this car here. He said, you have some people, you have two ladies in lower one, car one. After some hesitation I said, 'Yes.' He said, I want to '*interview*' them and I said what authority; and he took his shield out, and they presented the shields to me as police officers of Syracuse and I admitted them."

But the fact that Mrs. Burton did not go along voluntarily is clearly evident from her being confined in prison after having been stripped to her skin of her clothing and compelled to spend the night with drunken women prisoners.

Certainly an issue was squarely raised in each of these cases which should have been submitted to the jury.

The insulting language and conduct of defendant's railroad detective, Landers, in reference to these plaintiffs-in-error would alone have sustained these actions.

Gillespie vs. Brooklyn Heights R. R. Co., 178 N. Y., 347.

If it is permissible for a railroad to permit its sleeping passengers to be awakened at midnight in their berth for an *"interview"* by a couple of individuals invested with a metal badge and without any charge of any crime against them, surely it is just as right to allow the possessor of a metal badge to hold up a train and rob every passenger under the claim that they (passengers) are carrying stolen property.

It must be remembered that no charge of any crime was made until after these plaintiffs were taken off the train at Utica (see folios 33 and 48 of record); nor was the conductor of the train told of any charge until after his train had left Syracuse (fols. 83 and 84 of record), and the appellants taken from their berths.

The defendant-in-error in its brief will cite in support of its defense the following:

Hutchinson on Carriers, Sec. 987.
Owens vs. Wilmington & Western R. R., 126 N. C., 139.
Bowden vs. Atlantic Coast Line R. R., 144 N. C., 28.
Brunswick Western R. R. vs. Pouder, 117 Ga.
Texas Midland R. R. vs. Dean, 98 Texas, 517.

The only authority for Hutchinson, Sec. 987, are the four above cases, neither of which cite any authority in their support.

POINT IX.

The legal rights of a passenger growing out of a contract of carriage, is not a question of local law, but of general substantive law, upon which a federal court is not controlled by the decisions of the courts of the state where the contract was made, or the cause of action accrued.

Baltimore & Ohio R. R. Co. vs. Thornton, 188 Fed. Rep., 868.
Myrick vs. Mich. Cent. Ry. Co., 107 U. S., 102.
Chicago vs. Robbins, 67 U. S., 418.
Flint vs. Norwich Union, 37 Conn., 17.

In the last above case a detachment of 64 United States soldiers with several non-commissioned and two commissioned officers were passengers on defendant's boat; 14 of these soldiers were armed with loaded guns detailed as a guard over the rest; in a scuffle between some of the soldiers a gun was discharged and the plaintiff, a passenger, was shot.

In an action brought to recover damages the defendant claimed exemption by reason of not having authority over these soldiers, and the Court at page 559 says:

> "They (defendant) say they had no alternative but to take these soldiers from Fort

> Trumbell who caused as they assert, this disturbance, and this injury to the plaintiff, *that they were compelled to take them on this boat by military coercion. You may assume that fact as proved, but this will not vary the liability of the defendants under the present circumstances.*"

Constituted authority consists of the law; not its shadow, a metal badge or uniform.

Does the law require and insist that respectful obedience to its mandates prevail (Constitution of the United States, Act of Congress and Code of Criminal Procedure, Sec. 827, *supra*) or, is blind and dumb obedience to the possessor of a metal badge to prevail, and be a defense for a culpable and deliberate refusal to interfere against an unlawful and wrongful act where one (defendant) is charged by law with an *active* duty to prevent such unlawful and wrongful act?

No one can dispute that the Federal Constitution is the Supreme Law of the Land, nor that a Federal statute is supreme to State Law, either constitutional or statutory, and hence as the Federal Constitution and the Federal statute is supreme as to the arrest and extradition of fugitives from the various states; it follows as a necessary corollary that the power of the various states in that respect is subordinate to the Federal Constitution and statute, for the States do not possess by comity or otherwise any such power over crimes committed in other states.

Mr. Justice Woodward in his opinion at page 105 says:

> "As well say that a man might not be arrested in this state for murder until he has been formally charged with crime by a grand jury."

This is entirely irrelevant and outside the case at bar, for it is elementary that any person, be he citizen or police official, has the absolute right to arrest any person in New York State for any crime whether it be murder or otherwise *committed against the laws of the State of New York.*

And again where Mr. Justice Woodward says (fol. 105):

> "We apprehend that the arrest of persons believed to have been guilty of crimes in other states that they may be held to answer for a crime is governed by the same rules which apply to citizens of this state within our own jurisdiction."

Mr. Justice Woodward's opinion does not agree with the decision of *Malcolmson vs. Gibbons,* 56 Mich., 460, which says:

> "An *arrest* cannot be made in Michigan for purposes of extradiction to another state, without compliance with the laws of the United States."

Judge Woodward's opinion is in flat contradiction to the plain language and provisions of the Federal statute which defines the precedent steps necessary to give jurisdiction to make the arrest, but if the learned Justice meant to imply (as it seems from another part of his opinion) that citizens of other states charged with the commission of a crime there are only entitled to the same rights that citizens of this state possess, then the very same question arises, namely: *can a citizen of New York State be arrested in New York State* for a crime committed in *another* state without the requirements of the Federal constitution first having been complied with?

> "Michigan cannot treat foreign offenses as domestic and there is nothing in our statutes

which contemplates an arrest *without* warrant for purposes of extradition."

Malcolmson vs. Gibbons, supra.

And neither is there anything in the (New York) statutes which contemplates an arrest without warrant for purposes of extradition, but on the contrary, we have a plain definite statute which prohibits such.

Sec. 827, *Code of Criminal Procedure.*

Note all the precedent requirements contained in the Federal statute before a person can *be arrested and secured.*

Surely the language of this section (5278 R. S.), is clear, precise, definite and unambiguous as is also the language of Section 827, Code of Criminal Procedure (New York) which also defines the precedent steps necessary before * * * "any citizen, inhabitant or temporary resident of this (New York) State *is to be arrested* as a fugitive from justice * * *."

If we know the fate that will overtake the Republic if the Constitution shall be violated, we have but to read the history of our country under the Articles of Confederation. The forty-eight states after all constitute but the body of the Union. Its soul is the Constitution and directs them all and adherence to the provisions thereof, is absolutely necessary to the preservation, not only of the Union but also of the individual states in their relations with each other, and as the states possess no comity with respect to violations of the criminal law in other states (each state being sovereign unto itself only within its own boundaries) the only right to arrest and detain citizens of another state is that given by the Constitution and the Act of Congress thereunder, and a violation of its provisions is far more serious in its effect upon law and order and the body politic than the mere convenience of those entrusted with the duty of enforcing law.

> "The escape of a single felon from the punishment due to his crimes *is an insignificant evil* compared with the consequences which may flow from sanctioning a violation of the Constitution of the United States."
>
> *People vs. Curtiss*, 50 N. Y., 331.

Now, as the law is well settled, that railroad companies are bound to protect their passengers, from assaults and violence by fellow passengers and strangers (see cases *supra*) and as shown by the cases of *Commonwealth vs. Crotty, Elk vs. United States* (*supra*) the defendant would have been justified in resisting these officers in their action; it follows as a necessary corollary, that the failure of the defendant to protect these appellants, renders it liable.

This is nothing but a just and natural deduction of the law relative to carrier and passenger and any other conclusion would result in the destruction of principles pertaining to that relation which have been long established.

Here is a case of concededly illegal arrest which not only the plaintiffs-in-error would have been justified in resisting (*People vs. Shanley, supra*), but also the defendant-in-error.

> *Commonwealth vs. Crotty*, 10 Allen (Mass.), 404 and 405.
> *Elk vs. United States*, 177 U. S., 535.
> *1 Chitt. Crim. Law*, 44.

Can it be that the defendant-in-error, to whom the plaintiffs-in-error gave up their entire volition when they placed themselves under its care and protection as passengers, stand supinely by and escape, its duty to protect its passengers from *unlawful* assault, by non-interference in their behalf?

> *Flint vs. Norwich Trans. Co.*, 34 Conn., 17.

If the answer is the affirmative, then surely there is no such thing as relation of carrier and passenger with respect to the defendant-in-error in regard to its obligations, duties and liabilities towards the passenger.

It must be borne in mind, that in this *case*, the plaintiff-in-error was not charged with any crime, but was compelled by the police officials against her will to vacate her berth and to be removed from the defendant-in-error's train and be imprisoned.

Reason must be lodged somewhere. The utter abandon by the defendant-in-error of its plain duty to protect the plaintiffs-in-error renders it liable to her and this case should have been submitted to the jury.

McLeod vs. N. Y., Chic. & St. Louis R. R. Co.,
78 App. Div., 116.

It is respectfully submitted that the judgment of the New York Courts should be reversed with costs.

WILLIAM F. CONNELL,
Attorney for Plaintiff-in-Error.

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Supreme Court of the United States

No. 771

LUCINDA BURTON,
Plaintiff-in-Error,

against

THE NEW YORK CENTRAL AND HUDSON RIVER RAILROAD COMPANY,
Defendant-in-Error.

No. 772

CORA B. HEERAN,
Plaintiff-in-Error,

against

THE NEW YORK CENTRAL AND HUDSON RIVER RAILROAD COMPANY,
Defendant-in-Error.

BRIEF FOR THE DEFENDANT-IN ERROR.

CHARLES C. PAULDING,
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ROBERT A. KUTSCHBOCK,
Of Counsel.

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Supreme Court of the United States

No. 775

LUCINDA BURTON,
Plaintiff-in-Error,

against

THE NEW YORK CENTRAL AND HUDSON RIVER RAILROAD COMPANY,
Defendant-in-Error.

No. 776

CORA B. HEERAN,
Plaintiff-in-Error,

against

THE NEW YORK CENTRAL AND HUDSON RIVER RAILROAD COMPANY,
Defendant-in-Error.

BRIEF FOR THE DEFENDANT-IN-ERROR.

The above-entitled causes were tried in the Supreme Court of the State of New York, and at the conclusion of the trials the Court directed the exceptions to be heard in the first instance in the Appellate Division of the Supreme Court, where plaintiffs' exceptions were overruled and judgment directed for defendant-in-error, with costs (147 App. Div. 557). Upon the appeal to the Court of Appeals of the State of New York the said Judgments were affirmed with costs (210 N. Y., 567-568).

The causes come to this Court for review upon a writ of error granted by Honorable Justice Charles E. Hughes.

It is stipulated in the record that the two actions of Lucinda Burton and Cora B. Heeran be heard and argued upon the record to be printed in the Burton case, and that only one record, that in the Burton case, be printed (fols. 161-162).

Preliminary Statement.

It appears from the evidence given upon the trial that the tickets which plaintiffs-in-error presented to the conductor in charge of the train from Buffalo to New York, were accepted by him and their right to ride thereon to New York was unqualifiedly recognized. It also appears that defendant's employes in charge of the train had no knowledge that the plaintiffs-in-error, or either of them, were charged with a crime; that the arrest of the plaintiffs-in-error and taking them from the train at Utica before they arrived at their destination, was the act of the police officers of the City of Syracuse, N. Y., upon information furnished them by the police authorities of the City of Rochester, N. Y., to the effect that the plaintiff-in-error, Cora B. Heeran, was a Mrs. Guinness, who was believed to have committed murder in the State of Indiana.

It further appears that no extradition proceedings had been initiated for the purpose of having either of the plaintiffs-in-error arrested and brought into the State of Indiana, and that the decision of the courts of the State of New York, in which plaintiffs-in-error elected to have their rights in the premises determined, was made upon the ground that no interstate extradition proceeding had been invoked, and that no demand by the Executive of the State of Indiana had been made upon the Executive of the State of New York for the apprehension of the plaintiff-in-error, Mrs. Cora B. Heeran, or Lucinda Burton, her mother, and upon the express ground that the acts of the police officers complained of, and the acts

of the defendant-in-error, the Railroad Company, involved the application of the laws of the State of New York only, and were to be determined by the law of the State of New York, and that the exercise of the federal power of extradition did not arise and was not determined in these actions.

The answer of the defendant-in-error to the specification of errors relied upon by the plaintiffs-in-error is therefore:

> That a constitutional question is not raised in the record, since no federal power was invoked or was determined by the State courts, and a determination of a federal question was not necessary in these actions:
>
> That the several states possess original and undelegated power to arrest in the absence of a writ of extradition, a person charged with a crime committed in another state;
>
> That the arrest of the plaintiffs-in-error was the exercise of the inherent and undelegated power of the State, operating through the peace officers who had the same powers to arrest plaintiffs-in-error without a warrant for a felony committed outside of the State, as they had to arrest without a warrant a citizen of this State whom they had reasonable grounds to believe had committed a felony within the State.

In answer to certain propositions discussed in the brief of plaintiffs-in-error and which involve the application of the local substantive law of the State, the determination of which rests solely with the State courts, the review of which does not come within the cognizance of the federal courts; defendant-in-error further contends

> That the arrest of the plaintiffs-in-error was made by peace officers having apparent authority to exercise that power;
>
> That the arrest, eviction and detention of the plaintiffs-in-error were initiated and accomplished solely by the peace officers; and
>
> That no employe of the defendant-in-error participated in or ratified the wrongful act of the peace officers.

Statement of Facts.

The plaintiff-in-error, Cora B. Heeran, at the time, was traveling with her mother, Lucinda Burton, the plaintiff in the action arising out of the same occurrence. Mrs. Burton is 69 years old and about 5 feet 4 inches tall, and weighs about 128 pounds; her daughter, Mrs. Heeran, is 36 years old, five feet five inches tall, and at the time weighed about 180 pounds. Upon the trial it was claimed by the police officers that they arrested Mrs. Heeran only, and that the mother went along with her daughter voluntarily (fols. 66, 70, 78). The plaintiffs testified that Mrs. Burton was commanded by the officers to go with them (fols. 33-34, 36, 46-48), and that they also took her into custody (fols. 12, 34).

On the 8th day of May, 1908, Mrs. Heeran and her mother were in Franklin, Pennsylvania, and bought tickets at that station over the New York Central Railroad for New York City. They boarded the train at Franklin, and rode to Ashtabula, Ohio, where they changed cars to the car in which they were at the time of the occurrence (fols. 25, 79-80, 26-27). After the train reached Erie they were assigned to the lower berth of Section 1 in a Pullman car (fol. 11). They had their dinner and after retired to their berth at about 8 o'clock, both occupying the same berth (fol. 11). The mother was on the side next to the window and the daughter next to the aisle. They removed all their clothing and fell asleep. Mrs. Heeran testifies that the next thing she was conscious of was hearing voices outside of the berth, and some one parted the curtain in front of their berth, and the flash of a bull's-eye lantern was turned upon them (fols. 36, 43, 73, 75). She asked, "What do you want; who are you after?" and the person opening the curtains said "We want you." It afterwards appeared that the parting of the curtains was done by two police officers in the employment of the Police Department of the City of Syracuse,

Charles Neis and John F. Donovan. After the curtains were parted a conversation took place between Mrs. Heeran and the police officers, in which the officers told Mrs. Heeran that she was from Laporte, and that they wanted her, and that if she would not come out of the berth they would take her out without any clothes on (fols. 27, 12). Mrs. Heeran refused to get out of the berth until she was dressed, and after putting on part of her clothes, she and her mother were taken to the state-room in the car which was vacant, and there they finished dressing, and her luggage, consisting of a dress-suit case and a handbag, were also taken to the state-room (fols. 27-28).

During the controversy between Mrs. Heeran and the officers, while she was in the berth, and subsequently in the state-room, Mrs. Heeran was asked to produce some evidence of her identity, and she testified that she exhibited to the officers a receipt for the Franklin *Evening News*, and for three express packages or parcels which she had sent that morning from Franklin to Chicago, and she also had a bank book which they did not look at (fol. 14). She testified that after the curtain was parted the men passengers extended their heads out of their berths to hear and observe what was going on, and that two conductors and the porter stood in the aisle with the two officers (fols. 13-14), and that after they had gone to the state-room five men and the colored porter came while they were dressing (fols. 14-15). The porter brought the luggage from the berth to the state-room (fols. 14, 28).

After they were in the state-room always one policeman or the other was with them (fols. 14-15, 28), and it being known that the officers were to take the plaintiffs off at Utica, Mrs. Heeran testifies that the conductor asked her if she did not also desire to have her baggage taken off at that place, but she told him she did not, and therefore the baggage continued on to New York (fol.

15). He also gave the plaintiffs checks or coupons, entitling them upon the presentation of the coupons at the company's terminal in New York to have the tickets redeemed for the proportion of the unused fare from Utica to New York (fols. 23-24; Exs. A, B, and C, fols. 91-92).

The arrest arose out of the sensational notoriety which a Mrs. Guinness acquired throughout the country and in the newspapers by enticing men to her farm in Laporte, Indiana, and then murdering them to get possession of their money, and burying the bodies on the farm.

The details of the cold-blooded and horrible method which the murderess pursued naturally spread broadcast, and pictures of the notorious murderess appeared in all the newspapers, and Mrs. Heeran was believed by the police officers to be Mrs. Guinness, who was everywhere being sought for, and upon the return from Utica to Syracuse she testified that the officers charged her with being Mrs. Guinness, a murderess (fols. 18, 30).

It appeared from the testimony of policeman Charles Neis that he was on duty in the city of Syracuse on the night of May 8th, 1908, when officer Humphrey came to him with a message from officer Hungerford, acting officer in charge of the police force of the city for the day, informing him that on train 44, section 1, were two women, one of them a large woman about six feet tall, weighing about 200 pounds, and about 40 years old, dressed in black and covering her face with a black veil, the other being an older woman, and that the younger woman was supposed to be Mrs. Guinness, the Laporte murderess, and to get her; that she was wanted (fols. 64-65, 71). Neis asked Humphrey where he got his information, and Humphrey answered that he got it from police headquarters at Rochester (fols. 65, 72). Neis went down to the station alone, where a fellow officer, John F. Donovan, afterwards joined him, who was instructed to co-operate with Neis

(fols. 75, 77). They arrived at the station before train 44 came in (fol. 75). Neis went to James N. Ryan, the assistant night station master (fol. 58), and told him about the two women on the train, one of whom was supposed to be Mrs. Guinness (fol. 58), and Ryan informed his superior, J. P. Coogan, the night station master, who was in his private office, that the officers wanted to see him, and then proceeded with his duty of changing engines on the train (fols. 58-59), but Coogan did not leave his office and did not see the officers until he afterward went into the Pullman car and found them in the car which they had entered before he did. He had no conversation with them prior to the arrival of the train (fols. 60, 65, 71). Both Ryan and Coogan knew officers Neis and Donovan, and had known them to be members of the police force of the city of Syracuse, over ten years, and had seen them make arrests at the railroad station and at other places in the city of Syracuse (fols. 64, 60).

When Coogan entered the car the Pullman porter was on the outside and the train conductor, Nowlan, and the Pullman conductor were on the inside of the Pullman car, and the two plaintiffs were talking with officers Donovan and Neis (fol. 63). One of the officers said that Coogan would have to hold the train, but Coogan informed the conductor that he would not hold the train, that when time was up the train should start; thereupon Coogan went out of the car, looked at his watch and found that it was still one minute before leaving time, the conductor coming out with him, and when the time was up the conductor gave the signal to start the train, and the train immediately started and the conductor stepped back upon the car. The train was due at 12:10 A. M. and scheduled to leave at 12:15 (fol. 59), and it came in and went out on schedule time (fol. 61).

Mrs. Heeran testified that she heard the officers direct the conductor to hold the train and that he refused to do so (fol. 27), and that is why they were taken to Utica.

Conductor Nowlan testified that he took the train at Buffalo at 8:35 in the evening of May 8th, 1908, and went through the train to collect fares. He recalled that Mrs. Heeran and Mrs. Burton were awake at the time. They had previously turned their tickets entitling the plaintiffs to ride on that train from Buffalo to New York, over to the Lake Shore conductor and he had turned them over to Conductor Nowlan. He accepted those tickets as their authority to ride and upon them they rode from Buffalo to Utica (fols. 79-80, 25-27); that the distance from Buffalo to Syracuse is 149 miles and the running time is three and a half hours. From Syracuse to Utica is 54 miles and the running time is one hour and fifteen minutes. Utica was the first stop after Syracuse (fol. 82). That he did not know there were any suspicions regarding the plaintiffs, and had not been informed and did not know that a charge of felony had been made against either of them before the train reached Syracuse, or that it was charged or believed that either of them was Mrs. Guinness, the Laporte murderess; that he had not received any directions or instructions (fol. 80) from any superior to take any action with regard to either of these plaintiffs; that when the train came into the station at Syracuse he stood on the rear platform of the day coach next to the sleeping car, and when the train stopped he met officers Neis and Donovan, who asked him if car 1 was in his train with two ladies in the lower berth of section 1. After some hesitation the conductor answered "Yes," and the officer said he wanted to interview them, and the conductor asked them, "by what right or authority," and thereupon they showed the shields upon their persons as police officers of Syracuse (fols. 65, 72), and the conductor admitted them to the car. The conductor immediately went on the second floor of the station, Mr. Coogan's office, and registered the arrival of his train, the train and engine number, and turned in his time

slips in accordance with the rule of the company (fols. 80-81). He then returned to the train, compared his time with the engineer and then went back to car 1. About three minutes are spent in performing these details of duty (fol. 81). When he got inside of the Pullman car he found the two police officers, the porter and the station agent, Mr. Coogan, there. A conversation about holding the train came up, and Mr. Coogan said that he would not hold the train and directed the conductor to start it on time, and the conductor went out of the car and upon the station platform and gave the signal to the engineer to start the train, and the train started, and then he went back into the Pullman car, passing first through the day coach (fols. 27, 82).

He collected the officers' fares from Syracuse to Utica (fol. 81). The conductor testified that the officers followed him into the smoking car, and after remaining there a reasonable time to enable the plaintiffs to dress, the conductor went back to the Pullman car, and as the plaintiffs were then up he directed the porter to open the state-room and light it for their convenience, and their luggage was carried in there by his direction (fols. 81-82, 28).

The train arrived at Utica between 1:15 and 1:25 A. M. (fol. 15), and after the train stopped the officers conducted the plaintiffs off the train, one of the officers taking the arm of Mrs. Heeran and the other officer taking her mother's arm, and led them into the waiting room of the railroad company (fols. 15-16, 68, 73, 76, 32), where there was a crowd of people, and from there they were taken into the station master's room to avoid the annoyance of the crowd (fols. 32, 54-55), and there they remained until a train came from the east.

When the train from Syracuse arrived at Utica, Lawrence McMahon, a police officer of the city of Utica, was at the station, and saw the two Syracuse officers having

in charge Mrs. Heeran and Mrs. Burton. He went there by direction of his superior officer, Captain Ecker, who was the night captain of the police force that day. Information had been received that two Syracuse officers would there take off the train a woman supposed to be a Mrs. Guinness of Laporte, Indiana, charged with murder, and officer Acker directed McMahon to go there to render any assistance that might be required, and that if a crowd collected to see that order was maintained. He knew Donovan to be a member of the Syracuse police force, and at the time of the trial also knew that Neis was a member of the Syracuse police force. The officer testified that it was alleged that Mrs. Guinness had committed murder in Laporte, Indiana. He had received that information from his captain, and that the supposed Mrs. Guinness was on the train. He got these instructions about 1:10 o'clock A. M. and reached the station about 1:30, the train not having then arrived; that after the two women had been in the waiting room three or five minutes he suggested to the night train master that the women be permitted to go into the station master's private office to avoid the curious crowd, and the women were taken in there, where they remained until a train came from the east, on which they were taken back to Syracuse.

It appears that the Syracuse officers, not anticipating that they were to be taken to Utica on the train, did not have money enough to pay the fares between Syracuse and Utica, and officer Neis borrowed $1.00 from Landers, which he afterwards personally repaid to Landers (fol. 69).

He then went to the ticket office and bought four tickets, upon which the two plaintiffs and the two officers rode back to Syracuse (fols. 69, 74, 76, 57-58, 17, 32, 45).

On the arrival of a train from the east the plaintiffs were taken from the station master's room back to Syra-

cuse, the two officers conducting the plaintiffs into the day coach of the train from the station (fols. 32, 56, 57, 73, 76). Mrs. Heeran was directed to sit in the seat next to the window and one of the officers sat in the same seat with her and next to the aisle. Her mother sat in a seat across the aisle next to the window and an officer sat in the same seat with her next to the aisle (fol. 32). Neither of the plaintiffs paid fare from Utica back to Syracuse; the fares of the two plaintiffs and of the two officers were paid by the officers (fols. 32, 69) to the conductor of the return train.

Upon the arrival of the train at Syracuse the plaintiffs were taken from the train and placed in a carriage by the officers, one of the officers sitting inside and one of the officers riding outside with the driver, and they were driven to the police station (fols. 19, 32-33, 69, 76-77) and taken before the officer in charge (fols. 69-70, 77). Mrs. Heeran was then asked her name and address, and the officer at the desk asked the policeman who was with Mrs. Heeran, what the charge was, and she heard him say that the charge was murder (fol. 33). After these preliminaries a police officer took Mrs. Heeran upstairs and turned her over to the matron, who required her to take off all her clothes and then searched her. After being searched she was led into another room and there remained during the night (fols. 20-21). Up to this time no warrant of arrest had been served upon Mrs. Heeran (fol. 21).

About 8 or 9 o'clock in the morning the matron called for her and conducted her before the chief of police. They examined her mouth and hands and looked all over her, and said that he guessed she was not the woman that was wanted (fols. 21-22); she then asked if she could not go, and the chief of police answered "Not now; we have to wait for higher authority than ourselves before we dismiss you." He then asked here where she came from,

and she told him where she was born and brought up, and gave the names of people in Chicago and New York who knew her, and also gave the name of the chief of police at Franklin, Pa., with whom she had gone to school; but even then he would not let her go, and about 1 o'clock she was sent up stairs and taken back into the matron's room. They again sent for her to come down stairs about 2 o'clock in the afternoon, and asked her if she wanted to take the next train, and about 4 o'clock they sent an officer up stairs and asked her if she had tickets to New York, but she said no, and the officer asked if she wanted to give him the money to pay her way. She said no. The officer then took her and her mother in a cab down to the station (fols. 22-23).

Mrs. Heeran testified that she had a conversation with a sandy-complexioned man at the station, whom she afterwards identified as Landers (fols. 51-52), the special officer of the railroad company, and observed that he wore a button of an order to which her husband when alive belonged (fols. 31, 55). On learning that she had not been informed what the charge was against her, Landers asked the police officers why they did not tell her (fol. 17). Mrs. Heeran further testified that when the train from the east stopped at Utica Landers went into the car with them and that she heard him say to the policeman, "You have got her, she is the one. Hold on to her" (fols. 18, 52).

FIRST POINT.

A constitutional question is not raised in the record herein.

The writ of error finds no support in the record for the assertion that the constitutional provision now invoked in this court by plaintiffs-in-error was violated or

disregarded by the officials or the courts of the State of New York, or by the defendant-in-error, the Railroad Company. The record fails to disclose that any act on the part of the police officers of the State in any wise contravened or questioned the power of the federal government in the premises, or was disobedient to any process issued in pursuance of federal procedure; nor was there any denial of federal authority in the trial and determination of the issues in the courts of New York in which the plaintiffs-in-error elected to bring their actions.

The constitutional provision relied upon (Art. 4, Sec. 2, Subdiv. 2) becomes operative only on a demand of the executive authority of the state from which the fugitive has fled, and no demand having been made by the executive of the State of Indiana upon the Executive of the State of New York for the arrest and surrender of the plaintiffs-in-error, or either of them, the federal power of extradition was not applied to and denied by the state authorities.

> "A person charged in any state with treason, felony or other crime, who shall flee from justice and be found in another state, *shall on demand* of the executive authority of the state from which he fled, *be delivered up* to be removed to the state having jurisdiction of the crime."

The Act of Congress (1793, Sec. 5278, R. S.), prescribing the procedure by which this constitutional power is made operative, provides likewise that:

> "*Whenever the executive authority of any state or territory demands* any person as a fugitive from justice of the executive authority of any state or territory to which said person has fled * * * *it shall be the duty of the executive authority* of the state or territory to which said person has fled, *to cause him to be arrested and secured.*"

Both under the constitutional clause and the act of congress, a demand is a prerequisite in order to create the obligation of the asylum state to obey. Until a demand is made no constitutional power is invoked or applied.

Robb v. *Connolly*, 111 U. S., 624, 638;
Compton v. *Alabama*, 214 U. S., 1, 6.

> "When a demand has been made, in accordance with the Constitution of the United States, by the State from which the fugitive has fled, upon the executive authority of the State in which he is found, that instrument, indeed, makes it the duty of the latter to cause his arrest and surrender to the executive authority of the demanding State, or to the agent of such authority." *Robb* v. *Connolly, supra*, 638.

> "It is plain from the language of this clause of the Constitution, that the obligation of a State to deliver a fugitive from justice, on demand of the State from which he fled, arises when the fugitive is charged with crime within the State demanding the surrender * * * * *. But there must be a charge of crime existing against the fugitive in the State demanding his surrender, before the demand can legally be made, and it was said by Taney, Ch. J. in *Com. of Kentucky* v. *Dennison* (24 How. (U. S.), 104), that it must be a charge made in the regular course of judicial proceedings."
>
> *People ex rel. Lawrence* v. *Brady*, 56 N. Y., 182, 187

In the cases at bar, upon the record, no such demand was made. The decision of each of the three state courts in which the controversy was tried and determined was based upon the assumption that no demand by the executive of the State of Indiana, where the crime by the McGuinness woman was committed, was made upon the Executive of the State of New York (fols. 104-105, 111). The

decisions and judgments of the state courts therefore involved no denial of federal authority, or in any respect contravened federal administration or procedure.

The decision of the Appellate Division of the Supreme Court was based upon the ground that in the absence of a demand from the executive of Indiana, the police officers of the State of New York had the right without a warrant to arrest the plaintiffs-in-error for a crime committed in the State of Indiana. The Court, stating the proposition of the plaintiffs-in-error, and referring to the authorities cited in support of their proposition that New York State had no power to cause the arrest of a person charged with a crime committed in another state without first complying with the requirements of the United States Constitution, says:

> "The plaintiff cites many authorities for this proposition, but none of them, we apprehend, goes to the extent of holding that a citizen of a sister state may not be arrested in this state for a crime committed in such sister state until all of the steps have been taken which would justify the rendition of such person. As well say that a man might not be arrested in this state for murder until he has been formally charged with crime by a grand jury. The definition of 'Arrest' as given by the Code of Criminal Procedure (Sec. 167) 'is the taking of a person into custody that he may be held to answer for a crime,' and as it is made the duty of the executive authority of the state, under given conditions, to surrender persons charged with crime in sister states, we apprehend that the arrest of persons believed to have been guilty of crimes in other states, that they 'may be held to answer for a crime' is governed by the same rules which apply to citizens of this state within our own jurisdiction. * * *
>
> If we are right in this proposition, we are to view the acts of the defendant in the present cases in exactly the same light that we would view the question if the plaintiffs had been citizens of the State of New York" (fol. 105).
>
> * * * * *

"It thus appears that, in so far at least as citizens of this state are concerned in the commission of a crime within this jurisdiction, the peace officers of the City of Syracuse would have been justified in making the arrest which was made, upon the information by telegraph from the police department of the City of Rochester that a felony had been committed and that a person answering the description of the person suspected of the crime was upon the defendant's train in a particular berth, and this was the rule of the common law" (fol. 106).

* * * * *

"Our statute does not require that the felony shall have been committed within this state, nor does the common law. The authority to arrest without a warrant is general in a peace officer 'When a felony has in fact been committed, and he has reasonable cause for believing the person to be arrested to have committed it' (Sec. 177 Code of Criminal Procedure), and people coming within this state have no right to complain if they are treated in the same manner that our own people are treated under the law" (fol. 108).

The judgments were affirmed by the Court of Appeals of the State of New York without opinion (fols. 120-121; 210 N. Y., 567-568).

It is thus clear that the courts of New York determined that the power of police officers to arrest a person for a felony committed within a state embraced the right to arrest a person from another state who was charged with a crime committed in that state. This being the determination of the application of a state law, the question involved is beyond the purview of this Court under the long established rule that where the record discloses that if a question has been raised and decided in a state court adversely to a party claiming the benefit of a provision of the constitution or laws of the United States, and another question, not federal, has been also raised and decided against such authority, and the decision of the lat-

ter question is sufficient notwithstanding the federal question to sustain a judgment, this Court will not review the judgment.

Eustis v. *Bolles,* 150 U. S., 361, 366.
Pierce v. *Somerset Ry.,* 171 U. S. 641.

The issue tried and determined by the State courts was the application of the law of the State, and not a determination of Federal authority (fols. 104-108, 109). No Federal question is therefore raised herein.

Telluride Power Co. v. *Rio Grande Ry. Co.,* 175 U. S., 639, 647.
Seneca Nation v. *Christy,* 162 U. S. 283.

And upon the record it appears that the decision of the federal question invoked by the plaintiffs-in-error was not necessary to the determination of the cause in the State courts.

Murdock v. *Memphis,* 20 Wall. 590;
Cook County v. *Calumet & Chic. Canal Co.,* 138 U. S. 635.

After the testimony was all in, and the court had announced its decision, counsel for the plaintiffs asked leave to amend the complaints by alleging that the arrest, ejectment and removal of the passengers was in violation of the Constitution of the United States, which was granted (fols. 90-91); and such an allegation was accordingly inserted in the complaints (fols. 6, 161-162).

But the mere assertion of violation of such a right does not raise a federal question, since the decision of the cases in the state courts was upon the ground that the acts of the police officers were within the authority conferred upon them by the criminal law of the state and that such authority existed independent of the federal power upon which interstate extradition proceeds.

> "The mere fact that the plaintiff in error asserts title under a clause of the Constitution, or an act of Congress, is not in itself sufficient, unless there be at least a plausible foundation for such claim. A party may assert a right, title, privilege or immunity without even color for such assertion, and if that were alone sufficient to give this court jurisdiction, a vast number of cases might be brought here simply for delay or speculative advantage. *New Orleans Waterworks Co.*, v. *Louisiana*, 185 U. S., 336."
>
> *Iowa* v. *Rood*, 187 U. S., 87, 92.

In brief, a federal question is not presented by the writ of error, for the reasons:

> 1; That interstate extradition proceedings were not involved because such proceedings had not been initiated by a demand of the State of Indiana upon the State of New York, for the arrest and surrender of plaintiffs-in-error;
>
> 2; That the issues were tried and determined in the court selected by the plaintiffs-in-error upon the law of the state which applies to all residents of the state; and
>
> 3; That the question of the state law which was applied by the courts to the actions brought by the plaintiffs-in-error, did not involve the determination of any federal right, and no federal right was in fact determined.

Nor do the propositions of law discussed by Plaintiffs-in-error under Points IV, V, VII, VIII and IX, raise a federal question. These all involved application of the rules of substantive law in their relation to passenger and carrier which it is the sole function of the several states to determine through the courts which they have established for adjudicating the rights of litigants.

SECOND POINT.

The several states possess original and undelegated power to arrest, in the absence of a writ of extradition, a person charged with a crime committed in another state.

The object of placing the power of extradition under the federal government was to conserve peace and order in the several states by defeating the attempt of a criminal to escape into another state beyond the reach of the process of the state from which he had fled, and to obtain the return of the fugitive so that he might be tried for the crime with which he was charged. As each state already possessed adequate forms of judicial procedure for the arrest, examination and trial of a criminal, all that was necessary to effect compulsory extradition was to confer upon the federal government authority to declare that the executive of a state should have the right to make a demand for a fugitive from justice upon the executive of the state into which he had fled, and that the executive of the asylum state should comply with such demand.

No more was needed, and no more was intended to be delegated; no more is expressed in the constitutional clause and the enactment of congress in pursuance thereof. The constitution prescribes that a person charged with a crime, who shall flee from justice and be found in another state shall, on demand of the executive authority of the state from which he fled, be delivered up to be removed to the state having jurisdiction of the crime. The act of congress, 1793, specifically recognizes that the judicial process by which the demand is made shall be in accordance with the law of the state where the crime was

committed. The demand is to be accompanied by a copy of the indictment found or by an affidavit made before a magistrate of any state or territory, certified as authentic by the governor or chief of police of the state from which the person charged has fled. Thereupon it shall be the duty of the executive authority of the state to which such person has fled to cause him to be arrested and secured, and to cause a notice of the arrest to be given to the executive authority making such demand, or to the agent of such authority appointed to receive the fugitive, and cause him to be delivered to such agent when he shall appear. The act contemplates that the arrest, securing and delivery of the fugitive shall be in accordance with the procedure already existing in the asylum state. It is thus evident that in enforcing recognition of the federal power of extradition the act of congress merely requires that the judicial machinery in each of the two states shall be set in motion and applied to the accomplishment of the end sought, that is, the recovery of the fugitive. No new judicial power is conferred, and no new administrative power to effect the intended purpose is granted beyond authorizing the executive of one state to make a demand and the executive of the state upon whom the demand is made to comply with it. The statute recognizes the common law forms of criminal procedure which existed in full force and effect in the colonies and subsequently in each of the states, that is, the indictment, the affidavit, and the common law officers, magistrates, governors and police.

The demand for a fugitive is made by the executive of one state upon the executive of another state, and the compliance of the executive of the state upon whom the demand is made is declared to be a mere ministerial act.

Roberts v. *Reilly*, 116 U. S. 80, 94.

Outside of the narrow scope of such executive action, the decisions of this court recognize the independent, undelegated judicial and police powers of the several states in the matter of extradition.

> *Matter of Strauss*, 197 U. S. 324, 331.
> *Commonwealth of Kentucky* v. *Dennison*, 24 How. 66.

In the latter case the court says:

> "Kentucky has an undoubted right to regulate the forms of pleading and process in her own courts in criminal as well as civil cases, and is not bound to conform to those of any other state" (107).

Indeed recognition of the reserved power of the state goes so far as to concede authority in some instances to refuse compliance with a demand for a fugitive, for even where a demand for a fugitive is made under the act of congress, the asylum state is not required to render absolute obedience to the demand for extradition when presented. It possesess the power to look into the extradition papers to ascertain if they reveal constitutional warrant for the demand of surrender.

> *Ex Parte Reggel*, 114 U. S., 642.

In this case it was held that the executive authority was not under the duty of surrendering the person charged with crime, unless it was made to appear, in some proper way, that he was a fugitive from justice.

The Court says:

> "Any other interpretation would lead to the conclusion that the mere requisition by the executive of the demanding State, accompanied by the copy of an indictment, or an affidavit before a magistrate, certified by him to be authentic, charging the accused with crime committed within her limits, imposes up-

on the executive of the State or Territory where the accused is found, the duty of surrendering him, although he may be satisfied, from incontestable proof, that the accused had, in fact, never been in the demanding State, and therefore, could not be said to have fled from its justice. Upon the executive of the State in which the accused is found, rests the responsibility of determining, in some legal mode, whether he is a fugitive from the justice of the demanding State. He does not fail in duty if he makes it a condition precedent to the surrender of the accused that it be shown to him, by competent proof, that the accused is, in fact, a fugitive from the justice of the demanding State" (pp. 651-652).

And the decisions of New York are in accord with this view.

People ex rel. Jordan v. *Donohue*, 84 N. Y., 438.
People ex rel. Corkran v. *Hyatt*, 172 N. Y. 176.

The executive of the asylum state has the right to determine if the extradition papers show that a crime has been committed in the demanding state by the alleged fugitive.

Roberts v. *Reilly*, 116 U. S., 80, 94-95.
People ex rel. Lawrence v. *Brady*, 56 N. Y. 182.

Upon the executive authority of the state devolves the duty of determining all the questions of fact which arise under the Constitution and Statute.

People ex rel. Corkran v. *Hyatt*, 172 N. Y., 176, 209.

In this case Judge Cullen says:

"In *Cook* v. *Hart*, 146 U. S., 183, it was held: 'We have no doubt that the governor upon whom the demand is made must determine for himself, in the first instance at least, whether the party charged is in fact

> a fugitive from justice, *but whether his decision thereon be final is a question proper to be determined by the courts of that state.' The Constitution and laws of the state of New York, therefore control the decision of the question we are now considering"* (pp. 188-189).

It is plain from the Judicial construction of the extradition clause in the Constitution, and of the Act of 1793, regulating the manner of enforcing it, that the federal power does not extend to prescribing the judicial processes by which the asylum state shall arrest the fugitive, determine the validity of the record upon which the demand for extradition is based, and the character of the hearing which shall be given the fugitive upon the charge made against him; all that remains within the sovereign domain of the state.

And so far does federal authority abstain from encroaching upon state authority in the execution of the constitutional power of extradition, that the person engaged in the act of receiving the fugitive and transporting him to the demanding state, is held not to be acting under the authority and executing the power of the United States, but is the agent of the state to whose officers he surrenders the fugitive.

Robb v. *Connelly*, 111 U. S. 624

Judge Harlan discusses certain cases in which exercise of the writ of *habeas corpus* by state courts was denied upon the ground that they invaded the authority of the Federal Government, and then continues:

> "No such questions are here presented, unless it be, as claimed, that the plaintiff in error is, within the principles of former adjudications, an officer of the United States, wielding the authority and executing the power of the nation. We are all of opinion that he was not such an officer, but was and is simply

an agent of the State of Oregon, invested with authority to receive, in her behalf, an alleged fugitive from the justice of that state. By the very terms of the statute under which the executive authority of Oregon demanded the arrest and surrender of the fugitive, he is described as the 'agent of such authority'. It is true that the executive authority of the state in which the fugitive has taken refuge, is under a duty imposed by the Constitution and laws of the United States, to cause his surrender under proper demand by the executive authority of the state from which he has fled. It is equally true that the authority of the agent of the demanding state to bring the fugitive within its territorial limits, is expressly conferred by the statutes of the United States, and, therefore, while so transporting him, he is, in a certain sense, in the exercise of an authority derived from the United States. But these circumstances do not constitute him an officer of the United States, within the meaning of former decisions. He is not appointed by the United States, and *owes no duty to the national government, for a violation of which he may be punished by its tribunals or removed from office. His authority, in the first instance, comes from the state in which the fugitive stands charged with crime. He is, in every substantial sense, her agent, as well in receiving custody of the fugitive as in transporting him to the state under whose commission he is acting.* What he does, in execution of that authority, is to the end that the violation of the laws of his state may be punished. The fugitive is arrested and transported for an offense against her laws, not for an offense against the United States'' (pp. 634-635).

The federal government is without authority even to compel obedience by its Judicial power, or by military force to a demand for requisition, where the demand is made in strict conformity to the act of congress.

Kentucky v. *Dennison*, 24 Howard, 66, 109-110.

Still more declarative of the principle that the constitutional power of extradition extends only to a requirement of recognition by one state of a demand made upon it by another state and that the authority conferred does not extend to the application of any federal power upon the person of the fugitive within the asylum state or to the exercise of federal judicial or police power within the asylum state, or give any federal control or power of direction over the police or judicial power of the state, are a series of decisions of this court holding that where a fugitive is unlawfully seized within the state to which he has fled, and by force and against his will and the protest of the state is carried out of the state, *without resorting to extradition at all*, the seizure and carrying away is beyond the cognizance and jurisdiction of the federal authority, thus allowing a state to obtain a fugitive from justice from another state without resorting to extradition at all, and in defiance of the constitutional provisions carry him by force of arms into the state where he is charged with crime, and there prosecute him to conviction. Federal authority cannot stay the hand of the state so acting.

Mahon v. *Justice*, 127 U. S. 700;
Ker v. *Illinois*, 119 U. S., 436;
Cook v. *Hart*, 146 U. S. 183.

In the former case it appeared that the governor of West Virginia presented to the District Court of the United States for the District of Kentucky a petition, representing that during the month of September, 1887, a requisition was made upon him by the governor of Kentucky, for Plyant Mahon, alleged to have committed murder in the latter state, and to have fled from its justice and to be then at large in West Virginia; that pending correspondence between the two governors, and the consideration of legal questions growing out of the requi-

sition, and during the month of December, 1887, or January, 1888, the said Plyant Mahon, while residing in West Virginia, was, in violation of her laws, and of the Constitution and laws of the United States, and without warrant or other legal process, arrested by a body of armed men from Kentucky, and by force and against his will, conveyed out of the State of West Virginia into the County of Pike, in the State of Kentucky, and there confined in the common jail of the county, where he has been ever since, and is deprived of his liberty by the keeper thereof. The requisition was accompanied by a copy of the indictments, certified by the governor of Kentucky to be authentic; that at the same time the governor appointed one Frank Phillips as the agent of the state to receive and bring to the State of Kentucky the said Mahon, as provided by law in such cases; that on the 30th of September, 1887, the governor of West Virginia returned said requisition to the governor of Kentucky, informing him than an affidavit, as required by the statute of West Virginia, should accompany the requisition before the same could be complied with; which requirement was thereafter complied with; that at the time Mahon was seized no warrant for the arrest of Mahon had been issued or ordered to be issued by the governor of West Virginia in compliance with said requisition; and afterwards, on the 30th of January, 1888, he informed the governor of Kentucky that he declined to issue his warrant for the arrest of Plyant Mahon, in compliance with the requisition made upon him, because he had become satisfied, upon investigation of the facts, that Mahon was not guilty of the crime charged against him in the indictments; and that subsequently, on the 1st of February, 1888, the governor of West Virginia made upon the governor of Kentucky a demand for the release of Mahon from the jail of the County of Pike and his safe conduct back into West Virginia, with which demand the

governor of Kentucky declined to comply, on the ground that Mahon was in the custody of the judicial department of the commonwealth, and that the question of his release upon the grounds alleged in the demand was one which the courts alone could determine (pp. 703-704).

The opinion of the court was delivered by Mr. Justice Field, who, after discussing the power of the state to prevent forcible abduction of persons from its territory, says:

> "The abduction of Mahon by Phillips and his aids was made, as appears from the return of the respondent to the writ, and from the findings of the court below, without any warrant or authority from the governor of West Virginia. It is true that Phillips was appointed by the governor of Kentucky as agent of the state to receive Mahon upon his surrender on the requisition; but no surrender having been made, the arrest of Mahon and his abduction from the state were lawless and indefensible acts, for which Phillips and his aids may justly be punished under the laws of West Virginia. The process emanating from the governor of Kentucky furnished no ground for charging any complicity on the part of that state in the wrong done to the State of West Virginia.
>
> * * * * * * *
>
> "The only question, therefore, presented for our determination is whether a person indicted for a felony in one State, forcibly abducted from another State and brought to the State where he was indicted, by parties acting without warrant or authority of law, is entitled under the Constitution or laws of the United States to release from detention under the indictment by reason of such forcible and unlawful abduction. Section 753 of the Revised Statutes declares that 'the writ of *habeas corpus* shall in no 'case extend to a prisoner in jail, unless where he is 'in custody under or by color of the authority of the 'United States, or is committed for trial before some 'court thereof; or is in custody for an act done or 'omitted in pursuance of a law of the United States,

'or of an order, process, or degree of a court or judge 'thereof; or is in custody in violation of the Consti- 'tution or of a law or treaty of the United States.'

"As to the removal from the State of the fugitive from justice in a way other than that which is provided by the Second Section of the Fourth Article of the Constitution, which declares that 'a person 'charged in any State with treason, felony, or other 'crime, who shall flee from justice, and be found in 'another State, shall, on demand of the executive 'authority of the State from which he fled, be deliv- 'ered up, to be removed to the State having jurisdic- 'tion of the crime.' And the laws passed by Congress to carry the same into effect—it is not perceived how that fact can affect his detention upon a warrant for the commission of a crime within the State to which he is carried. *The jurisdiction of the court in which the indictment is found is not impaired by the manner in which the accused is brought before it.* There are many adjudications to this purport cited by counsel on the argument, to some of which we will refer" (pp. 705-708).

In *Ker* v. *Illinois, supra,* the plaintiff in error was forcibly kidnapped from Peru, with which country the United States had a treaty of extradition, in disregard of the treaty, and brought into the State of California, and then by demand of the governor of Illinois upon the governor of California was brought into State of Illinois and tried, and it was held that kidnapping of the prisoner in Peru in violation of the treaty with that Republic and bringing him against his will into the State of Illinois and there trying him for a crime against the laws of state, was not a denial to him of the provisions of the 14th Amendment of the Constitution declaring that no state shall deprive any person of life, liberty or property without due process of law; and referring to the question of how far the forcible seizure in another country and transfer by violence, force or fraud to this country could be

made available to a fugitive to resist trial in this state court for the offense charged against him, the court say:

> "However this may be, the decision of that question is as much within the province of the State court, as a question of common law, or of the law of nations, of which that court is bound to take notice, as it is of the courts of the United States. And though we might or might not differ with the Illinois court on that subject, it is one in which we have no right to review their decision" (p. 444).

In *Cook* v. *Hart, supra,* the same principle was passed upon and the conclusions arrived at in *Ker* v. *Illinois* and *Mahon* v. *Justice,* were approved. Mr. Justice Brown, delivering the opinion of the court, and referring to these cases, says:

> "These cases may be considered as establishing two propositions: 1. That this court will not interfere to relieve persons who have been arrested and taken by violence from the territory of one state to that of another, where they are held under process legally issued from the courts of the latter State. 2. That the question of the applicability of this doctrine to a particular case, is as much within the province of a State court, as a question of common law, or of the law of nations, as it is of the courts of the United States."

It follows from the foregoing that the demanding state is not limited in the prosecution of the fugitive to the crime set forth in the indictment. The state may, after the fugitive is once within its boundaries, try and convict him for a crime other than that specified in the indictment served upon the executive of the asylum state.

Lascelles v. *Georgia,* 148 U. S., 537.

> "If a fugitive may be kidnapped or unlawfully abducted from the State or country of refuge, and

be, thereafter, tried in the State to which he is forcibly carried, without violating any right or immunity secured to him by the Constitution and laws of the United States, it is difficult to understand upon what sound principle can be rested the denial of a State's authority or jurisdiction to try him for another or different offence than that for which he was surrendered. If the fugitive be regarded as not lawfully within the limits of the State in respect to any other crime than the one on which his surrender was effected, still that fact does not defeat the jurisdiction of its courts to try him for other offences, any more than if he had been brought within such jurisdiction forcibly and without any legal process whatever" (545).

By these adjudications the very objection which plaintiffs-in-error raise on this appeal to the validity of the action of the police officers of the State of New York is declared to be beyond the cognizance of the federal court; that is, the manner of obtaining the custody and effecting the transfer of an alleged fugitive from justice from the state to which he has fled, back to the state in which the alleged crime was committed without following the interstate extradition proceeding prescribed by the act of congress.

> "But it is settled by the decisions of this court that, except in case of a fugitive surrendered by a foreign government, there is nothing in the Constitution, treaties or laws of the United States which exempts an offender, brought before the courts of a State for an offence against its laws, from trial and punishment, even though brought from another state by unlawful violence, *or by abuse of legal process.*"
>
> *Lascelles* v. *Georgia, supra,* (p. 543).

The application by a State in an extradition proceeding of the power of arrest under the police power to which its own citizens are subject, is not a violation of the con-

stitutional clause requiring judgments of State courts to be in accord with "due process of law."

In *Ker* v. *Illinois, supra,* the Court says:

> "We do not intend to say that there may not be proceedings previous to the trial, in regard to which the prisoner could invoke in some manner the provisions of this clause of the Constitution, but, for mere irregularities in the manner in which he may be brought into the custody of the law, we do not think he is entitled to say that he should not be tried at all for the crime with which he is charged in a regular indictment. He may be arrested for a very heinous offense by persons without any warrant, or without any previous complaint, and brought before a proper officer, and this may be in some sense said to be 'without due process of law.' But it would hardly be claimed, that after the case had been investigated, and the defendant held by the proper authorities to answer for the crime, he could plead that he was first arrested 'without due process of law.' " (pp. 439-40.)

A person who commits a felony derives no immunity or privilege under the power of arrest which the State applies to its own citizens charged with a like crime, because he is not a citizen of the State which is asked to apprehend him.

The Supreme Court discussing the nature of the discrimination prohibited by the Fourteenth Amendment, says:

> "But the privileges and immunities secured to citizens of each state in the several states, by the provision in question, are those privileges and immunities which are known to the citizens in the latter states under their constitution and laws by virtue of their being citizens."
>
> *Paul* v. *Virginia*, 8 Wal., 168, at 180.

> "Its sole purpose was to declare to the several states that whatever those rights, as you grant or

establish them to your own citizens, or as you limit or qualify or impose restrictions on their exercise, the same, neither more nor less, shall be the measure of the rights of citizens of other states within your jurisdiction."

Slaughter-house Cases, 16 Wal. 36, 77.

In *Mahon* v. *Justice*, *supra*, Mr. Justice Field said:

"As to the Fourteenth Amendment, it is difficult to perceive in what way it bears upon the subject. Assuming, what is not conceded, that the fugitive has a right of asylum in West Virginia, the State of Kentucky has passed no law which infringes upon that right or upon any right or privilege or immunity which the accused can claim under the Constitution of the United States. The law of that State which is enforced is a law for the punishment of the crime of murder, and *she has merely sought to enforce it by her officers under process executed within her territory.* She did not authorize the unlawful abduction of the prisoner from West Virginia."

In these repeated refusals of the Supreme Court to assume jurisdiction of extradition proceedings within the boundaries of the state, beyond requiring recognition of a demand for the surrender of a fugitive from justice, is found full and considerate admission that the manner of apprehending a fugitive resides exclusively within the original and undelegated power of the state.

Counsel argues that police officials have no right to arrest a fugitive from justice in anticipation of a formal demand for extradition (Brief pp. 21-23), but this is incorrect. In joining in the federal compact the states surrendered to the general government their right as an independent, sovereign power, to surrender on the principle of comity at the request of another state or foreign nation, a fugitive from justice. But such abdication of authority does not extend to lawful action by the state

preceding or in anticipation of a demand being made under the power of extradition embodied in the constitution by the consent of the states. A state may by comity exercise the right of apprehending a fugitive from justice, and hold him for a reasonable time to give the demanding state an opportunity to present the prescribed requisition papers, or, in case no demand is made, to discharge the fugitive from custody.

Matter of Washburn, 4 Johns. Ch., 106.
Matter of Fetter, 23 N. J. L., 311.
United States v. *Rauscher*, 119 U. S., 407.

When interstate extradition proceedings are initiated by a demand of the executive of a state from which the fugitive has fled, obviously the proceedings are based upon federal statutory regulation and not upon the principle of comity; but until such proceedings are thus initiated, the action of the police authorities of the state to which the fugitive has fled, in apprehending the fugitive, is the exercise of the undelegated sovereign power of the asylum state in anticipation of a formal demand for extradition being subsequently made upon it. The statutes of New York regulating the procedure of its officials upon a demand for requisition being presented, is not enacted in obedience to a constitutional requirement, but is the exercise by the state of its undelegated power to prescribe the manner in which its officers shall act when a demand from an executive of another state is made. Regulation by such anticipatory legislation and action by the state authorities is outside of the scope of the power conferred by the states upon the federal government in the matter of extradiction. Each state retains unrestricted discretion to regulate such proceedings as in its judgment the orderly administration of its affairs may call for.

In the State of New York the arrest of a person

charged with a crime before the receipt of the prescribed extradition papers, including indictment, existing under the principle of comity has been regulated by statute (Code of Crim. Pro., Secs. 827-834).

Section 828 declares that a magistrate may issue a warrant as a preliminary proceeding to the issuing of a requisition by the Governor of another state.

Section 833 prescribes that the district attorney must immediately thereafter give notice to the executive authority of the state to the end that a demand may be made for the arrest and surrender of the person charged;

Section 829 of the Code of Crim. Pro. provides:

> "The proceedings for the arrest and commitment of the person charged *are in all respects similar to those provided in this Code, for the arrest and commitment of a person charged with a public offense committed in this state;* except that an exemplified copy of an indictment found, or other judicial proceedings had against him, in the state or territory in which he is charged to have committed the offense, may be received as evidence before the magistrate."

Here is an express legislative declaration that "the proceedings for the arrest and commitment of the person charged are in all respects similar to those provided in this Code for the arrest and commitment of a person charged with a public offense committed in this state", and since there is no valid reason or distinction in the nature or the power of arrest of a fugitive before the papers are received and after they are received, it is obvious that in principle both proceedings are the exercise of the same inherent and undelegated power of the state, which applies to a citizen of this state arrested and charged with a felony.

In *People ex rel. Corkran* v. *Hyatt, supra,* Judge Cullen says:

"If, therefore, on the return to the writ it is clearly shown that the relator is not a fugitive from justice and there is no evidence from which a contrary view can be entertained, which is the fact in this case, as appears by the stipulation and concession of the parties, *there is no reason why greater efficacy should be given to the warrant of extradition than to the warrant of any other magistrate by which a citizen is imprisoned or deprived of his liberty*" (p. 191).

Plaintiffs-in-Error, in support of Point II, that the several states do not possess original power to arrest non-residents, cite *Prigg* v. *Commonwealth*, 16 Peters, 536, and quotes from the opinion of Mr. Justice Story (Brief of Plaintiffs-in-Error, pp. 12-13). The case cited does not involve a fugitive from justice under the clause invoked in the case at bar. It involved the construction of the clause giving a slave-owner the right to go into another state and recover a fugitive slave:

"'No person held to service or labor in one state, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein; be discharged from such service or labor; but shall be delivered up, on claim of the party to whom such service or labor may be due'" (p. 609).

The wide and fundamental divergence in the legislation enacted by congress to carry out the object of these two constitutional provisions is striking. The third section of the fugitive slave law provided:

"'That when a person held to labor in any state or territory of the United States, under the laws thereof, shall escape into any other of the said states or territories, the person to whom such labor or service may be due, his agent or attorney, *is empowered to seize or arrest such fugitive from labor, and take him or her before any judge of the circuit or district courts of the United States*, residing or being within

> the state, *or before any magistrate of a county, city or town corporate, wherein such seizure or arrest shall be made, and upon proof,* to the satisfaction of such judge or magistrate, either by oral testimony or affidavit, &c., *that the person so seized or arrested,* doth, under the laws of the state or territory from which he or she has fled, *owe service or labor to the person claiming him or her, it shall be the duty of such judge or magistrate, to give a certificate thereof to such claimant,* his agent or attorney, *which shall be sufficient warrant for removing said fugitive to the state from which he or she fled.*' The fourth section imposes a penalty on any person who shall obstruct or hinder such claimant, his agent or attorney, &c., or shall rescue such fugitive when so arrested, &c." (p. 663).

The fugitive slave act authorized the owner to go into the state into which the slave had fled and to seize or arrest him wherever found, and personally or by his agent, to take him before a magistrate and require the magistrate, upon proof being presented to him of ownership, to give a certificate thereof to the claimant, which certificate "shall be sufficient warrant for removing said fugitive from the state to which he or she fled". In the one case the delivery is made to the executive of the state and by him the fugitive is remanded to the appropriate court to be tried in accordance with the rules of legal procedure; in the other case delivery is made to the person himself, whose control or subsequent treatment of the fugitive no one had legal right to regulate or interfere with.

The fugitive slave law was a mode of recovery of specific property, analagous to the common law remedy of recaption (*Prigg* v. *Pennsylvania, supra,* 613) so vital to the interests of the slave holding states, that without a constitutional guarantee of the right of the owner to enter a state into which a slave had fled and to seize and return him to the possession and control of the owner,

they would not have yielded assent to the adoption of the federal government.

Here is found the fundamental difference in the conditions which determined the degree to which the states surrendered their sovereign control of the respective subject matters.

Even the express designation of state magistrates as officers empowered to carry out the purposes of the act, the majority of the court held did not make it compulsory upon them to act.

> "As to the authority so conferred upon state magistrates, while a difference of opinion has existed, and may exist still, on the point, in different states, whether state magistrates are bound to act under it, none is entertained by this court, that state magistrates may, if they choose, exercise that authority, unless prohibited by state legislation." Mr. Justice Story, p. 622.

And Chief Justice Taney, dissenting from the holding of the court that congress possessed exclusive authority to legislate upon the subject, and that the states were without power to enact legislation to aid in furthering the constitutional provision, said:

> "The state officers mentioned in the law are not bound to execute the duties imposed upon them by congress, unless they choose to do so, or are required to do so by a law of the state; and the state legislature has the power, if it thinks proper, to prohibit them" (p. 630).

It will be seen that congress applied its legislative power directly upon an officer created by the state, by providing that it should be the duty of a magistrate to give a certificate requesting that the fugitive slave owed service or labor to the person claiming him.

The legal authority conferred upon the owner to

remove the fugitive was not subject to appeal or stay. It is thus described by Mr. Justice Story:

> "A certificate from an officer authorized to inquire into the facts, is the easiest way to secure the right to its contemplated intent. It was foreseen, that claims would be made, which would be contested; some tribunal was necessary to decide them, and to authenticate the fact, that a claim had been established. Without such authentication, the contest might be renewed in other tribunals of the state in which the fact had been established; and in those of the other state through which the fugitive might be carried, on his way to the state from which he fled. Such a certificate too, being required, protects persons who are not fugitives from being seized and transported; it has the effect of securing the benefit of a lawful claim, and of preventing the accomplishment of one that is false. Such a certificate to give a right to transport a fugitive slave through another state, a state cannot give; its operation would be confined to its own boundaries, and would be useless to assert the right in another sovereignty (p. 640).

THIRD POINT.

As the arrest of the plaintiffs-in-error was an exercise of the inherent and undelegated power of the state, the peace officers under the law of the State of New York had the same right to arrest them without a warrant for a felony committed outside of the state, as they had to arrest without a warrant a citizen of this state whom they had reasonable grounds to believe had committed a felony within the state.

It is thus seen that the procedure by which a fugitive from justice is apprehended for surrender in compliance

with an extradition demand, has its source in the exercise of the police power which the state has prescribed for the arrest of persons charged with the commission of crimes within the state. That power of arrest applies to all specified crimes, and to all persons charged with committing any of the specified crimes. There is no limitation as to crime, place or person. Generally the power of arrest is applied to persons committing crimes within the state; in exceptional cases to persons who are charged with the crime committed in another state, but in both cases it is the exercise of the same power. It does not change its nature as it operates first on one and then on the other, nor is the scope of its efficacy limited or broadened as it lends its aid to carry out an interstate procedure of extradition; and as a person charged with a felony may be arrested without a warrant by a peace officer it is immaterial where the felony was committed whether within or without the state. Abhorence of crime is infused through the common law. It recognizes murder as a felony wherever committed, and grants legal authority to a peace officer to arrest without warrant where he has reasonable ground to believe a felony has been committed.

1 Wharton's Criminal Law, Secs. 25-26.
Kuntz v. *Moffett*, 115 U. S., 487-504.
Burns v. *Erben*, 40 N. Y., 463, 466.

The provisions of the Code of Criminal Procedure of New York relating to arrest without a warrant are the following:

"Sec. 168. By whom an arrest may be made.
An arrest may be:
* * * * * *
2. By a peace officer without warrant."
"Sec. 177. In what cases allowed.
A peace officer may, without a warrant, arrest a person:

3. When a felony has in fact been committed, and he has reasonable cause for believing the person to be arrested to have committed it."

* * * * * *

"Sec. 179. May arrest at night, on reasonable suspicion of felony.

He may also, at night, without a warrant, arrest any person whom he has reasonable cause for believing to have committed a felony, and is justified in making the arrest, though it afterward appear that a felony had been committed, but that the person arrested did not commit it."

These statutory provisions are declaratory of the common law on that subject (*People* v. *Glenmore,* 175 N. Y., 45, 54-55; *People* v. *Wilson,* 141 N. Y., 185), so that in the case at bar the officers having authority at common law to exercise the power of arrest without warrant, the plaintiff is in no better position to claim illegality of arrest than any citizen of the state would be who had been arrested without warrant for a felony committed in this state.

This is the rule stated in an authoritative text book. *Hutchinson on Carriers.*

"Sec. 987.—The carrier is not required to resist an officer of the law who has apparent authority to arrest a passenger, nor is he under any duty to inquire into the legality of the arrest, or to see that the officer uses only such force as is necessary to make the arrest. If he has notice that the arrest is wrongful, it would be his duty to make inquiry into the matter, and, if justified, to interfere. But where the arrest is by officers of the law and is apparently regular, and there is nothing to put the carrier on notice that the arrest is illegal, the carrier will not be bound to interfere with the officers and prevent the arrest. Having a right to presume that the arrest is legal, his obeying the command of the officers is no breach of duty to the passenger."

And the principal has been adopted by the appellate courts of several states.

Owens v. *Wilmington & Weldon R. R. Co.*, 126 N. C., 139; decided March 13, 1900;

Brunswick Western R. R. Co. v. *Ponder*, 117 G. A., 63; 60 L. R. A., 713; decided February, 1903;

Texas Midland R. R. v. *D. Dean*, 98 Texas, 517; 70 L. R. A., 943;

Bowden v. *Atlantic Coast Line R. R. Co.*, 144 N. C., 28; 12 Ann. Cas, 783; decided February, 1907.

Heeran v. *N. Y. C. & H. R. R. R. Co.*, 147 App. Div., N. Y. 557 (decided December, 1911); Affirmed by Court of Appeals of the State of New York February 1914; 210 N. Y., 567-568;

Burton v. *N. Y. C. & H. R. R. R. Co.*, 147 App. Div. N. Y., 557; Affirmed by Court of Appeals of the State of New York, 210 N. Y., 567-568;

Tompkins v. *M. K. & T. Ry. Co.*, C. C. A., 211 Fed. 391, decided January, 1914;

Fenell v. *A. T. & S. F. Ry. Co.*, 98 Kan. 210, decided June, 1916.

FOURTH POINT.

The arrest of the plaintiffs-in-error was made by peace officers having apparent authority to exercise that power.

The determining facts in the present case are clearly within the authorities cited.

Neis and Donovan were known to be peace officers, and had apparent authority to make the arrest.

Each testified he was a member of the police force of the City of Syracuse, and Coogan, the night station master, and Ryan, the assistant station master, both testified they had known Neis and Donovan to be members of the police force for ten years, and had seen them make arrests in the Railroad Company's station and in other places in the City of Syracuse. McMahon, a member of the Utica police force, also testified that they knew them to be members of the police force of Syracuse. No attempt was made to controvert this fact.

And when these officers approached the conductor, Nowlan, they informed him that they were police officers, and also exhibited to him their badges.

Probably every newspaper-reading person in the country knew of the fact that Mrs. Guinness, of Laporte, Ind., was charged with wholesale murder and the burying of her victims on her farm; that she had fled from her home and that the officers of the law were pursuing her. It is apparent from the testimony of conductor Nowlan that he, too, had heard the report, but aside from that Officer Neis testified that he told the conductor that the woman, a passenger in car, was supposed to be Mrs. Guinness, of Laporte, Ind., and charged with murder. It also appears that the police officers informed Coogan and Ryan of the same fact, making three employees of defendant to whom that information was imparted, two of these employees having control of the train while in the station and the other having charge of the train as conductor while it was running between stations.

The fact to which general notoriety had been given by publication in the newspapers, and by the general talk among men of the commission of the crime of wholesale murder by Mrs. Guinness, and the statement of the officers that the passenger described was supposed to be Mrs. Guinness was sufficient to justify defendant's employees in entertaining the belief that a felony had been committed by the woman named and that she was sought

to be apprehended by police officers under color of legal authority.

2. It was not the duty of defendant's employees to determine whether or not the peace officers had sufficient reason to believe that Mrs. Heeran was Mrs. Guinness, who had committed murder, and that they were acting conformably to law in case of a fugitive from another state; that responsibility rested solely upon the two peace officers and their superiors.

The determination of the fact came exclusively within the province of police administration, not requiring confirmation or approval on the part of defendant's employees. Being justified in believing, for the reasons above stated, that murder had been committed by a woman named Mrs. Guinness, and that the passenger in section one, car one, was believed by the officers to be Mrs. Guinness, it was the duty of defendant's employees to refrain from questioning the correctness of the officers' information and conclusion, and from requiring them then to produce properly attested warrant for the arrest of the plaintiffs, and to leave them to take such course as, in their judgment, duty dictated. The contemplated arrest was apparently not prompted by an unfounded and arbitrary impulse. The officers delared that they had received information from the police department of Rochester, through which the train had passed, that one of two passengers occupying section one, in car one, describing them, was believed to be Mrs. Guinness, and that she was charged with having committed murder at Laporte, Ind. Neis testified:

> "The information that it was car 1, section 1, berth 1, came in the information from Rochester. I believe I did testify on my direct examination that it was car 1. I saw the train conductor on the platform before I went into the car. I asked him which

was car 1. I told him what I was there for. I told him I was an officer, there was two women in that car, to tell me where they were; I told him who they were supposed to be, and that I had to 'interview them' " (fol. 72).

Here was a description of the appearance of two passengers, said to occupy section 1 in car 1, to which the passengers occupying that berth substantially correspond.

It appears that the tickets of the two plaintiffs had been taken up by defendant's employees, and that upon them they had been accepted as passengers, and had ridden, without their rights as passengers being questioned, from Franklin, Pa., to Syracuse, and Conductor Nowlan testified that he had received no direction from any superior to take any action in any respect, with regard to the two passengers, and that before the train arrived at Syracuse, he had no suspicion regarding them and did not know that any criminal charge was made against them. Manifestly he had no information to oppose to the statements which the peace officers made to him and which they stated had come to them from the police department from the City of Rochester. Under the circumstances defendant's employee had every reason for crediting the information which the peace officers gave, or at least had not the slightest ground for questioning the legality of their action.

3. As to the question of identity.

Here is where the officers erred, but the law does not impose upon a carrier the duty of acting as sponsor for the personal identity of its passengers. Passengers upon entering the cars do not produce a passport or photographic likeness with name and signature. Defendant's employees, in fact, had no knowledge upon that subject, whereas the peace officers in case of a person charged

with felony generally have private advices of identity to aid them in the detection and apprehension of the criminal, and for aught that appeared to defendant's employees the two peace officers may have had such information in regard to Mrs. Heeran. Indeed, they intimated that they had, but it was not their duty to disclose it to the conductor, and the conductor was under no obligation to demand it, for the law commands each to remain within his respective scope of duty and forbids the carrier to encroach upon the domain of the peace officer.

FIFTH POINT.

The arrest, eviction and detention of the plaintiffs-in-error were initiated and accomplished solely by the peace officers.

It is clear that the first suggestion for the arrest of the plaintiffs came from Rochester, through which the train which was carrying the plaintiffs passed, and it was communicated to the police authorities at Syracuse before the train arrived there; and was also transmitted to the police authorities at Utica. Charles Neis, one of the police officers of Syracuse, testified that when on duty on the night in question Officer Humphrey came to him bearing instructions from Officer Hungerford, the officer in charge in the captain's office that night, that Officer Humphrey informed him that on train 44, in section 1, were two women, the younger of which was about 40 years old, about 6 feet tall, weighing about 200 pounds and who wore a black veil over her face, and was supposed to be Mrs. Guinness, the Laporte murderess (fols. 64-65). It will be here observed that this information did not come from the conductor or the train crew, because the conductor testified that he did not know that any suspicion was resting against either of the plaintiffs-

in-error, and had not received any direction or instructions from any superior of his to take any action with regard to either of them (fols. 79-80).

Neis asked the messenger from the police captain where he got this information from, and he answered that it came from the police department at Rochester (fol. 65.)

Neis, in giving the information that had come to him from his superior officer, testified:

> "He said on train 44, section 1 and in berth 1, was a lady traveling with an old lady, the younger one of the two was about forty years old, had her face covered with a black veil; she was dressed in black; a large woman measuring about six feet tall, and weighing about two hundred pounds. And the other lady was an old lady, and that she was supposed to be Mrs. Guinness, the younger one of the two" (fols. 64-65).

Upon cross-examination by plaintiff's counsel Neis testified:

> "Hungerford said words to the effect, 'Go down to train 44, section 1, berth 1; there are two women there; get them; we have got word from Rochester they want them.' He mentioned the berth to me and the car and the section and the train; told me there were two women there, to get them, that they were wanted, from Rochester. There isn't any dispute now about that; there can't be any possible disagreement between you and I about that at all" (fol. 71).

Officer Donovan testified:

> "Neis had his orders the same as I did—from headquarters" (fol. 77).

As has been stated, the conductor, prior to the arrival of the train at Syracuse, had no knowledge of any charge existing against either of the plaintiffs and had no sus-

picion regarding them; to him they were as innocent of crime as any other passenger upon the train, and neither did any of the station employees at Syracuse have any knowledge of a charge against either of the plaintiffs until such knowledge was communicated to them by the police officers, Neis and Donovan.

Neis first went to James N. Ryan, the assistant night station master (fol. 58), who knew both Neis and Donovan to be members of the police force of the city, and had known them to be such for a period of about ten years. He had seen them make arrests in and about the station and in other parts of the city (fol. 64). Neis asked Ryan what time train 44 came in, and said they were to get a couple of women off the train, one of whom they believed to be Mrs. Guinness (fols. 63). Ryan reported the conversation to his superior, James P. Coogan, the night station master (fol. 60), and then immediately went out of the office to be ready to change engines upon the train when it arrived.

Coogan testified that he was in his private office at the time when he learned from Ryan what the officers wanted, but he did not go out to see them, evidently wishing to keep clear of any participation in the contemplated arrest, and did not see the officers until they were all in the car and after they had parted the curtains of the berth and had commanded the plaintiffs to get out of the berth and to come with them (fols. 73, 62, 61).

When the train drew into the station at Syracuse Conductor Nowlan was standing on the rear platform of the coach immediately next to Pullman car No. 1, and when he stepped off upon the station platform Officers Neis and Donovan came to him and asked him for car No. 1, and the conductor pointed out the car. Then one of the officers said: "You have two ladies in lower 1, car 1?" and after some hesitation the conductor answered: "Yes." The conductor's testimony continues: "He

said, 'I want to interview them,' and I said 'By what authority,' and he jerked his shield out, and they presented their shields to me as police officers, and I admitted them" (fol. 80).

Neis testified that he showed the train conductor his badge, and told him who he was and what he wanted (fol. 65); that there were two women in the car, and who they were supposed to be, and that he had to interview them (fol. 72). Conductor Nowlan testified that one of the women was supposed to be Mrs. Guinness, the Indiana murderess (fol. 83).

The conductor proceeded with his customary duties; that is, he went to Mr. Coogan's office, which was on the second floor of the station, and registered the number of his train and engine, the arriving time and the leaving time, and turned in his time slip, which occupied him about three minutes (fols. 80-81), and then went back into the Pullman car, and they found the two officers, Mr. Coogan and the porter (fol. 81).

That it was the two officers who invaded the plaintiffs' berth and took and held them in custody upon the train from Syracuse to Utica is the clear inference to be drawn from all the testimony.

Mrs. Heeran testified that, after retiring at about 8 o'clock in the evening for her night's sleep, she was not conscious of anything until she heard voices outside of the berth, and at first thought it was somebody getting into the upper berth, and then continued: "I heard men's voices and I listened a few moments, and I heard them say: 'There is another curtain.' Then I knew they were coming into my berth, because I had told the conductor that night when he made up the berth to put on the lower curtain, and I knew they were coming to my berth. I thought, 'I will holler and make some noise so that the conductor will hear me, there is men here.' With that I called out: 'What do you want—what are you after?'

With that, they had the little curtain open, and he said: 'We want you'" (fols. 11-12) * * * "I said: 'What do you want of me' He said: 'You are from Laporte, I want you.' I said: 'Now, you see I am not from Laporte, and you have made a mistake—you were too quick.' He said: 'That's all right; we are after you, and none of that talk to me, or I'll take you without any clothes on, and don't you be making any show here.' I said: 'If you take me out of here, you will take me by force: I am not going willingly.' With that he said: 'Who is that old woman with you?' I said: 'That is my mother.' He said: 'Get out of that; we want you, too'" (fol. 12), that the officers insisted that she get up and leave the train without dressing (fol. 12, 27), and she testified that they also demanded of the conductor that he hold the train to enable the officers to take the plaintiff off at Syracuse, and that he refused to do so (fols. 27, 66).

From the testimony of the officers it appears that after entering the Pullman car, the officers were shown where the plaintiffs' berth was by the porter (fols. 65-66). Officer Neis testifies:

> "We shook the curtain slightly where they were, and the younger one of the two asked what we wanted, and we told her we were two officers, and we wanted her to get up, and wanted to have a talk with her, and she wanted to know what was wanted. I said: 'You had better get up'" (fol. 66).
>
> "I told these plaintiffs, before they came out of their berths, that we were two officers" (fol. 68).

On cross-examination:

> "Mrs. Heeran told me her name was Heeran and that she came from Franklin, Pa. I had some conversation with her before she got out of that berth. I was there to take her out. * * * She finally got out of that berth" (fol. 73).

It was then suggested that the plaintiffs go from their berth into the stateroom, and, after they were partly dressed, they did so, putting on the outside apparel after they were in the stateroom. Mrs. Heeran testified that, before going to the stateroom, she pulled all her clothes on but did not fasten them; she had her shoes on, but they were not laced (fols. 14, 27-28); that after they were in the stateroom one of the officers was always with them.

The voices which she heard outside of her berth before the curtains were parted were the voices of the officers who afterwards had them in charge, and it was one of them who turned the bull's-eye lantern upon them after the curtain was parted (fols. 28-29).

On arrival of the train at Utica, the officers took the plaintiffs-in-error from the train, one of them taking Mrs. Heeran by the arm, and the other taking Mrs. Burton by the arm (fols. 15, 38, 73, 78). The conductor did not get off, and neither of the plaintiffs-in-error saw him again (fols. 44, 34).

They were conducted by the officers into the public waiting-room, and, after a few moments, were led from that into the station master's private office, where they remained until a west-bound train stopped at Utica, on which they were carried back to Syracuse (fols. 17, 32).

The co-operation of the police authorities of the three cities of Rochester, Syracuse and Utica in the effort to apprehend one of the plaintiffs as the Laporte murderess, is further confirmed by the testimony of Lawrence McMahon, a policeman of the City of Utica. He testified that on the night in question Captain Ecker was acting night captain of the police force of the City of Utica, and by him McMahon was ordered to proceed to the New York Central station to meet the train which was due there at 1:10 o'clock A. M. (fol. 53) on the morning of May 9th; that information had been received by the police department that two Syracuse officers would take a woman off

the train, supposed to be Mrs. Guinness, the Laporte, Ind., murderess, and McMahon was instructed to go to the station to render any assistance that might be needful, and to prevent any disorder in the event that a crowd should collect (fol. 53). He arrived at the station at about 1:35 P. M., and saw the two police officers, whom he knew, having the plaintiffs in custody (fol. 54).

When in the station the question of the charge against the plaintiffs, and the identification, was discussed (fols. 17, 68-69). Then the westbound train arrived. Mrs. Heeran testifies:

> "So in a little while the train came in; we were taken into the train by these two men, and when I went to get on the train I felt I was going to faint again, and I said to the man that had hold of me—I said: 'Don't make me go in there—I am nauseated, I am sick, and I know I am going to faint—don't take me in there.' He said: 'You will have to go in.' I said: 'You will just have to let me go then to the ladies' room, because' I said, 'I am sick.' 'Well,' he said, 'I will go with you.' So he took me, and he went with me. When I came out he took me by the arm, and we went back and we sat down. He sat me down next to the window and he stood up in the aisle. My mother was on the other side of the train. She was next to the window; the man was next to the aisle—one of the two men that had taken us off the train" (fols. 17-18).

Officer McMahon testified that he saw the plaintiffs leave the station and walk back to the train with the Syracuse officers, and then he went back to the police headquarters and reported what he had observed (fol. 56).

Mrs. Heeran testified that it was on the train from Utica back to Syracuse that the officers informed her for the first time that she was said to be Mrs. Guinness and was charged with murder (fols. 18, 30), and she added:

"All the time he told me when I got to Syracuse he would be certain if I was the woman, and if I was not the woman he would release me."

The plaintiff-in-error, Mrs. Heeran, was taken to a police station in Syracuse and charged with felony by the peace officers.

"When the train reached Syracuse, then I was taken off the train there. I was taken into a carriage —the three of us—my mother and an officer. Only one officer went into the carriage, and I guess the other one was on top some place, because when we got to the station he was there, also; the officers took us in front of a desk, and we gave our names and addresses. This was the desk in the police station, I suppose. I knew then I was in the police station. I was not asked any questions by the officer at the desk —only my name and address; he did not tell me what I was charged with. He asked something, though, of the officer that was with me. I didn't hear what the officer said; I think the officer said—I can't tell it from hearing him say this—I don't hear him say it, you know, but the charge was murder; the charge was murder. The officers told me that; I was charged with murder. About half way from Utica to Syracuse, he told me that alone. The officer sitting with me told me alone—that I was charged with murder, and said I was also said to be Mrs. Guinness. That is who I was taken for" (fols. 33, 19; also fols 77-78).

Mrs. Heeran then described in detail being turned over to the matron in the police station and searched by her, and how she spent the night in the police station (fols. 19-21). She then testified that about 8 or 9 o'clock next morning she was taken downstairs before the chief of police, and, after he had looked her all over, said: Well, I guess you are not the woman that we wanted" (fols. 21, 24).

"And I said: 'Well, I can go then, can I?' and he said: 'Oh, no; not now.' 'Well,' I said, 'If I am

not the woman that is wanted, why can't I go? They told me all along just as soon as I got back to Syracuse, you would know whether I was the woman, and that I could go right on again.' He said: 'We have to wait for higher authorities than ourselves before we dismiss you.' He asked me where I came from, and I told him. I told him where I was born and raised, and he asked me if there was anyone I could get to identify me. I told him who I could call on. I gave him the names of people in Chicago. I gave him the names of people in New York, and I gave him the name of the chief of police at Franklin, Pa., who I had gone to school with. Then, when I had done all this, still he wouldn't let me go, and I said to him: 'Well, why shouldn't I go now?' I said: 'If I am not there on the first train this morning, they will worry about me.' He said: 'That's all right; we can't let you go.' So about one o'clock in the afternoon I asked for my purse, and he gave it to me—just to get something out of it—and took it away from me again, and then sent me upstairs with an officer, and I was taken back into the matron's room'' (fol. 22).

He also said that they had telegraphed in accordance with Mrs. Heeran's suggestion to the chief of police of Franklin, and, at about 2 o'clock in the afternoon she was asked if she desired to go to New York on the next train, and she said she did, but was not allowed to leave until about 4 o'clock in the afternoon (fols. 22-23), and she and her mother purchased tickets back to New York, where they arrived the same evening (fol. 24).

SIXTH POINT.

No employee of the defendant-in-error participated in or ratified the wrongful act of the peace officers.

Let us now leave the acts of the peace officers and examine those of defendant's employees and see what

relation they had to the wrong which the plaintiffs suffered. It is to be observed:

That Plaintiff's rights as passengers were fully and continuously recognized by the Defendant from the starting point of their journey at Franklin, Pa., to Syracuse, the place of arrest by the peace officers, and to Utica, where they were taken from the train by the officers, and to New York, their destination.

The plaintiffs purchased their tickets at Franklin, Pa., for New York City, over the New York Central Railroad, and rode from Franklin to Ashtabula, Ohio, where they changed cars to the train which contained the Pullman sleeping car No. 1, in which they were when they were arrested by the Syracuse police officers (fol. 11). After they secured their berth at Erie they had their dinner, and then immediately retired, perhaps about 8 o'clock (fol. 11), both occupying the lower berth, the mother sleeping next to the window and Mrs. Heeran next to the aisle, and they remained asleep until the train reached Syracuse, when Mrs. Heeran was awakened by hearing voices outside of her berth, as narrated in the preceding Point.

It is indisputable that the rights of the plaintiffs as passengers had been completely recognized and in no way interfered with by the defendant or any of its employees from the time that the plaintiffs entered upon defendant's cars at Franklin, Pa., to the arrival of the train at Syracuse. The ride from Franklin to Ashtabula occupied about two hours (fols. 26, 25). The train on which the plaintiffs entered at Ashtabula was a train of the Lake Shore & Michigan Southern Railway, which terminated at Buffalo., there connecting with the New York Central. The train was known as No. 44. Conductor Nowlan testifies that he took the train at Buffalo (fol. 79), in the evening of May 8th, 1908, and went through the train collecting the fares. He recalled that Mrs. Heeran

and Mrs. Burton were awake at the time, and that they had turned their tickets over to the Lake Shore conductor, who in turn, had turned them over to Conductor Nowlan, and among the tickets thus turned over to him were those entitling the plaintiffs to ride on train 44 from Buffalo to New York, and he accepted those tickets and permitted them to ride on them from Buffalo to Utica; that he did not know that there was any suspicion regarding these passengers, or that any charge of felony had been made against them before the train reached Syracuse, and did not know until after his conversation with the police officers that one of them was supposed to be Mrs. Guinness, of Laporte, Ind., the murderess, and that he had not received any directions or instructions from any superior to take any action with regard to either of these plaintiffs (fols. 79-80). Having inspected their tickets and found them to be properly issued and entitled to ride under them as passengers, and having accepted the plaintiffs as passengers by virtue of those tickets from Franklin, Pa., to Ashtabula, Ohio, and thence to Buffalo, N. Y., and thence to Syracuse, the presumption is that the defendant would continue to recognize the validity of those tickets and the rights of the plaintiffs to ride under them to the destination—that is, New York. Indeed, the conductor's recognition of the plaintiffs' rights to be transported from Utica to destination appears in the issuance and delivery by defendant's train conductor to the plaintiffs of certificates entitling them to receive back from the railroad company the amounts of the unused portions of their tickets from Utica to New York (fols. 23-24; Exs. A, B and C, fols. 91-92), and the Pullman conductor delivered to the plaintiffs the rebate on their berth in section 1 (fol. 82).

It appears upon the face of the certificates that they were issued to the plaintiffs for the reason that the officers took the passengers off the train at Utica (fol. 85).

When the plaintiffs' testimony is carefully examined it will be found that it affords no foundation for the inference which the appellants seek to make from it. Mrs. Heeran testified that:

> "When I got out into the aisle, I said to the conductor: 'I am not the woman that is wanted—can't you do something for me?' I said: 'I am not the one—there is a mistake here,' and he said: 'You had better *go along without any trouble.*' I partly dressed the both of us, and the two men and the conductors of the train took us to the stateroom" (fol. 14).
>
> "We left the car when the conductor said it was Utica. Why, the two men that had taken us out of the berths and the conductor came to the stateroom and took us out, and said to me: 'We are going to take you off here—come on and get your things on;' and we put our things on, and they took us off the train. They took me off by the arm and took me down the steps, and my mother the same way. They took her by the arm, too. My baggage—the trunks were on the train, and they wanted, the conductor asked me if they shouldn't take my baggage off here. I said: 'No; let it go on.' He said: 'Well, you'll need it here.' *I said*: 'No, I will not need it, because *this is a mistake.*' And he said: 'Well, *I hope it is.*' My suit case and my hand grip were carried off by the two men that had taken us out of the berth" (fol. 15).

It is evident from this testimony that the conductor did no more than considerately to inform them that the station where the officers were about to take them off had been reached to enable them to prepare for the leaving of the train without hurry and without countenancing or participating in the act of arrest of the plaintiffs and the taking of them off the train by the police officers. He said: "You had better go along without any trouble," merely advisory language, and when Mrs. Heeran declared the charge and arrest were a mistake, he respectfully said: "He hoped so." He stopped the

train to give passengers for Utica an opportunity to leave the train there. But he did no more. Mrs. Heeran testifies:

> "I don't know if the conductor of the train on which I rode from Buffalo to Utica did or did not get off the train at Utica. I didn't see him at any time; no, I did not. After I got off the train at Utica, I did not see the conductor" (fol. 34).

Mrs. Burton testified:

> "I don't think the conductor got off the train at Utica. I didn't see him. I did hear my daughter ask the conductor if he could not do something for her, and *I heard him say that he thought she had better follow the officer.* When I was in the station the two officers were in there with me, and one of them led me by the arm from the car into the station, and the officer had my daughter by the arm from the car to the station" (fol. 44).

It further appears that none of the defendant's employees participated in or co-operated with the officers in the invasion of berth 1 and the removal of the plaintiffs from the train at Utica.

The officers did not obtain authority or consent from either the assistant station master, Ryan, or Station Master Coogan to take the plaintiffs from the train. They obtained access to the car by telling the conductor that they were officers and displayed their shields in confirmation of the statement that one of the passengers in car 1, lower berth of section 1, was said to be Mrs. Guinness, the Laporte murderess, and that they desired to go into the car to interview her. After they had entered the car and found the plaintiffs in the berth, the officers demanded that the train should be held to give them an opportunity to take the plaintiffs from the train, but the conductor and the station master refused to comply with

this demand, thus upholding the rights of the plaintiffs to be there as passengers, and refusing to co-operate with the peace officers in obtaining the arrest and removal of the plaintiffs from the train. The conductor refused even to recognize any special favor which the police officers might be disposed to claim because they were unavoidably being transported on the railroad away from home while in the discharge of their duties in seeking to apprehend a person charged with felony, and required them to pay their fare from Syracuse to Utica the same as an ordinary passenger, and on return of the officers with the plaintiffs from Utica to Syracuse the four were required to pay the regular fare between these stations.

When train 44 reached Utica, the conductor having delivered to the plaintiffs the rebate checks for the unused portion of their tickets, he no further concerned himself with them (fols. 15-16); and on the train from Utica back to Syracuse the only act of defendant's employee, the train conductor, concerning the plaintiffs, was the collection of the fares from them and the officers accompanying them in compliance with the regulation which applied to every passenger without discrimination, and when the train reached Syracuse the plaintiffs got off in the custody of the two policemen and were by them placed in a carriage and driven away from the station without any employee of the defendant assisting or participating in the act.

The mere presence and onlooking of defendant's conductors does not constitute approval of and participation in the acts of the peace officers.

All that the plaintiffs can claim which in the remotest degree may be said to connect the conduct of the conductors with the invasion of their berth is that when the curtains were parted the two conductors and the porter

stood in the aisle (fols. 12-13), and the colored porter went several times into the stateroom after they had been taken to the stateroom by the officers (fol. 15); also that when it became known that the officers had come into the car to arrest the plaintiff the passengers dressed in night gowns projected their bodies from the berths to hear and observe what was taking place (fols. 13-14).

This testimony should be examined with the consideration that the dramatic scene in which the witness played so commanding a part was precipitated by the action of the police officers, and that the defendant was not responsible for creating that scene; that the story of Mrs. Guinness, the Laporte murderess, was probably known to every reader of a newspaper in the United States, and it was quite natural that when it became known that the officers were arresting a passenger in the Pullman car as the supposed murderess that everybody would be impelled by natural impulse to have a look at the notorious monster oblivious of nocturnal attire. Of course Mrs. Heeran, by using the term "undress," did not mean that these people looked at her in her nakedness (fols. 13-15, 37, 28); it was her exaggerated way of intending to indicate that the curious passengers had only pajamas and nightgowns on, a form of exposure which from carelessness or indifference frequently occurs in sleeping cars. The railroad company, having no reason to anticipate such an extraordinary occurrence happening in the sleeping car, is not responsible for not having a force sufficient to compel the curious occupants of the berths to keep their heads within the berths and to hold the curtains fast while such dramatic incidents were taking place between the police officers and the accused passenger.

It has been determined that the mere communication of facts or circumstances of suspicion to police officers, leaving them to act on their own judgment and responsibility, does not render the person giving such information liable.

Brown v. *Chadsey*, 39 Barbour, 253, 264;
Byrnes v. *Ewen & Frost*, I Robertson, 555, 559; affirmed 40 N. Y., 463, 464-465;
Farnham v. *Fealey*, 56 N. Y., 451-452, 454.

See also
Whitney v. *House*, 54 App. Div., 420.

In the case at bar there was even no communication of facts or circumstances of suspicion by defendant's employees to the peace officers, so that the conduct of the defendants in the cases above cited possessed an active affirmative character towards the plaintiff, which is absent in the case at bar. Here the conduct of defendant's employees was purely passive; but those cases are referred to as holding that even conduct of an affirmative and active character tending to sustain a criminal charge against a person and to bring about a conviction is, nevertheless, held not to render the person making such communication liable.

Lander's statement to the peace officers that they had the right person, was not an act of ratification by defendant.

The plaintiff seeks to further connect the defendants with the wrong inflicted upon her by the police officers by the statement that Landers, the special officer of the defendant, said to the policemen when they were in the car to be taken from Utica back to Syracuse, and to the officer who had her in charge, "You have got her, she is the one; hold on to her" (fol. 18). This was no more than the expression of a personal opinion of Landers' upon the question of identity, and for such an expression of personal opinion the defendant is not liable, since it was not within his authority as a special officer to express an

opinion upon the validity of the action of other peace officers or to ratify on behalf of the defendant an act which was not performed for its benefit or by any express or implied authority. It is not testified that Landers, by any physical act of his own, participated in the wrongful arrest of the plaintiffs.

Nor did the loan of money by Landers to the peace officers operate as an act of ratification or participation in the unfounded charge by the defendant.

Likewise the loaning of money by Landers to the officers to enable them to pay their fare from Utica to Syracuse was his personal and individual act for which defendant is not responsible. There is no evidence in the case from which it can be inferred that he had express or implied authority to advance money to the officers on behalf of the railroad company and from its treasury, or that any officer of the defendant knew of the arrest of the plaintiffs by the police officers and having authority for that purpose directed Landers to pay on its behalf the amount of their railroad fares from Utica to Syracuse.

That it was a personal and individual loan of Landers to Neis and Donovan is uncontrovertibly shown by the testimony of Officer Neis that he did not have money enough to pay for the tickets of the four passengers from Utica back to Syracuse, and borrowed $1.00 from Landers, which he afterwards repaid to him personally and directly (fols. 69, 57-58). The tickets being purchased by Officer Neis, Officer Donovan did not know anything about the borrowing of this dollar from Mr. Landers (fols. 69, 76). This does not operate as a ratification of the acts of the police officers because Landers, as special officer, had no authority to make such ratification, and there is no evidence that what he said was ever reported to an officer of the defendant having authority to make ratification who did in fact affirm the loan as a corporate loan.

From whatever standpoint the facts are examined the conclusion always follows that what defendant's employees did under the circumstances was merely the due and proper recognition of their subordination to the authority of the police officers.

The facts themselves, examined in the light of the circumstances acquit defendant's employees of the charge of violating any duty which they owed to the plaintiffs with respect to the peace officers, and the statement that the officers made to defendant's employees that they had reasonable ground to believe that one of the passengers in section 1 was a Mrs. Guinness, charged with murder, made it the commanding duty of defendant's employees to stand aside and permit the duly recognized officers of the law to discharge their duty in that particular without resistance or objection by them, otherwise they would have rendered themselves criminally responsible for actively resisting known officers of the law in the discharge of their duty to the people. It was a case where the interest of the State became paramount and intervened between the carrier and the passenger and terminated the legal duty which the defendant had assumed toward the plaintiffs as passengers.

SEVENTH POINT.

The right of defendant-in-error to resist the officers is not determined by the right of the plaintiffs-in-error to resist them.

On page 28 of the brief plaintiffs in error say:

> "Here is a complete test as to the defendant's liability. Could the appellants have lawfully resisted the officers in this instance and if *they* could *lawfully* resist, was it not the duty of the defendant to have

resisted the officers and protect their passengers to the utmost of their power?"

And the same statement is repeated at pages 36 and 37:

This suggested test confuses the fundamental basis on which the respective rights of the plaintiff and the defendant to resist a peace officer rests. The plaintiff had the right to resist because she was not guilty of the crime for which the officers undertook to arrest her, and in restraining her of her liberty the officers committed an act of trespass. That is all that is determined in the cases which the respondent cites, but that is an entirely different proposition from the right of the carrier to resist peace officers who insist upon their right to go upon one of its trains to arrest a person charged with felony. In such a case the duty of the carrier towards its passengers is subordinate to that of the peace officers, who to the carrier represent the police power of the state. Resistance to the officers by the carrier's agents operating the train would, in such a case, expose them to criminal prosecution. The New York Penal Law provides:

"Sec. 1848. A person, who, after having been lawfully commanded to aid an officer in arresting any person, or in re-taking any person who has escaped from legal custody, or in executing any legal process, wilfully neglects or refuses to aid such officer is guilty of a misdemeanor.

Sec. 1851. A person who, in any case or under any circumstances not otherwise provided for, wilfully resists, delays or obstructs a public officer in discharging, or attempting to discharge, a duty of his office, is guilty of a misdemeanor."

The act of arrest was not the act of the defendant, but the act of agents of a separate and independent branch of government to which the carrier himself and the obliga-

tion which he assumed with respect to his passenger are subordinate, and if the act of the police officers in making the arrest was in fact in violation of the law and contrary to the procedure prescribed in such cases, the responsibility therefor rests upon the peace officers, since through the channels of criminal administration they were presumed to have been invested with knowledge of the facts concerning the alleged felony and the person who had committed it, and legal warrant for apprehending her. It affirmatively appears that defendant's servants were ignorant of the fact that a passenger was being transported in one of its cars, charged with felony; that it did not initiate the act, participate in it or subsequently ratify it, but sought scrupulously to avoid participation in the arrest. Its conduct in the matter was passive, extending only to the due recognition of the superior and independent power of the peace officers. Having assured themselves that Neis and Donovan were what they purported to be, that is, members of the police force of the City of Syracuse, they were justified in assuming that what these officers did under color of their office they had ample and sufficient warrant for.

As Chief Judge Simmons said in *Brunswick & Western R. R. Co.* v. *Ponder, supra*:

> "Then, too, if our conclusion be correct, that the conductor could assume that the arrest was a lawful one, and was under no duty to prevent it, we think the company cannot be held liable for the excessive force used. Ponder became the prisoner of the officers as soon as they laid hold on him, and before he was removed from the train. He was taken out from under the protection of the conductor, as against the officers of the law. He was then in the custody of the law, and, whether or not the conductor or anyone else was authorized to prevent the use of unnecessary force in making the arrest, the railroad company was in this regard no longer under any duty to him as a passenger."

The authorities cited by Plaintiffs-in-error under Points IV, V, VII, VIII and IX, are not questioned. It appears from the cases cited that the acts complained of were the negligent acts or ommission of the carriers' own employees, and the carriers were held liable upon the theory that in accepting the passenger and undertaking to transport him, it was acting within the designed purpose of its undertaking to transport him safely, not only in respect to the mechanical movement of the car, but also in respect to the conduct of other passengers. The law confers upon a carrier adequate power to reasonably carry out this undertaking, and to discharge its duty of protection to passengers against abusive language or conduct, and assault of other passengers; but this obligation is limited by reason of the nature of the undertaking to such as it voluntarily receives into its cars as passengers under an agreement made with them. The obligation does not extend into the domain of criminal law, making the carrier an agent of the state with the duty of participating in the administration of that branch of the law, or authorize it to interpose for the defense of the right of one of its passengers against the acts of officers charged with the enforcement of criminal law. Mr. Justice Carr speaking for the Appellate Division in the cases at bar says:

> "Doubtless if the conductor had inquired he would have learned that the police officers were acting without a warrant issued either by the Governor or a magistrate under the provisions of Sections 827-829 of the Code of Criminal Procedure. If such information had been before him, as it was not, he was not then obliged to determine, at the risk of his employer, a question of law as to which the Justices of this court are not in complete harmony" (fol. 109).

In *Tompkins* v. *Missouri, K. & T. Ry. Co.*, (C. C. A.

211 Fed. 391), it appeared that the train conductor gave information by telegraph to the officers of the law that a negro was riding in a Pullman car set apart for whites, and told the Pullman conductor what he had done, and the train thereafter arriving at a station, where the officers of the law were, the deputy sheriff of the County came to the car, displayed his badge of office, arrested and took the plaintiff from the car in the presence of the Pullman conductor and porter, who neither protested, objected or took any action to prevent it. It was held that the failure of the Pullman Company and its employes to prevent the arrest and removal of the passenger did not constitute actionable negligence.

> "It was the duty of the Pullman Company to exercise reasonable care and diligence to protect the passengers in its cars from unlawful discomforts, attacks, inconveniences, insults and injuries; but that duty did not require it or its employes to substitute their opinions of the law and of the duty of officers of the law for the judgment of the latter and to interfere and obstruct the discharge by these officers of their duties, and the failure of the Pullman Company and its employes to obstruct, interfere with, or prevent the arrest and removal of the plaintiff from the Pullman car by the deputy sheriff did not constitute actionable negligence" (p. 394).

EIGHTH POINT.

The argument in support of the duty of a common carrier to protect a passenger against wrongful arrest by peace officers, based upon the carrier's liability for seizure of goods committed to it for transportation under an invalid warrant of attachment, is not applicable since the two propositions rest upon the different fundamental powers and obligations of the peace officer and the common carrier, respectfully in the two cases assumed.

Plaintiffs-in-error (Brief pp. 29-31) cite authorities to sustain the indisputable proposition that the carrier is responsible for the wrongful delivery of goods without legal process, and respondent argues that a corresponding obligation should be put upon to protect a passenger against wrongful arrest by a peace officer, and this view of the case is adopted by Mr. Justice Thomas, in his dissenting opinion (157 App. Div. pp. 557, 564; fol. 114). But there is no analogy in the two cases, as the duty of the peace officer and of the common carrier of goods rest upon separate and independent principles.

The distinction lies in the fundamental difference in the relation and obligations of the carrier to the shipper and to the state. In the matter of transportation of goods the carrier is by common law held responsible as insurer for the safe delivery of goods to the designated consignee. This legal duty is civil in its nature, involving the fulfillment of a contractural undertaking with the consignor, and to enable the carrier to fulfill his undertaking the law invests him with power to hold the goods against all the world except the consignee, and to resist the attempt of an officer to seize the goods except upon the presenta-

tion of a writ of attachment valid on its face and regularly served; and as the officer has no authority to take the goods without a writ and is required to serve it upon an agent of the carrier, the carrier thereby obtains the opportunity to examine the writ in order to determine whether or not it is regular and valid. But when the carrier is found to be transporting a passenger charged with a crime, then the superior power of the state intervenes to exercise its paramount authority to apprehend criminals, and as the efficient discharge of this duty by the state depends upon the unopposed and expeditious conduct of its peace officers, the *quasi* public character of the carrier's duty and the contractural nature of his undertaking with the passenger compels him to yield to the superior claims of the police power of the state. The peace officer then supercedes the position and relation of carrier to the passenger and becomes responsible for any error or illegality in the apprehension of a passenger as an alleged criminal. It is not that less concern is shown by the law for a passenger's freedom from assault on a railroad train than is shown for the wrongful seizure of a case of goods in course of transportation by the carrier, as appellant states in his brief. It is that in the case of a passenger charged with felony the possession and control of the passenger are taken from the carrier and transferred to the peace officer, the change of relation and transfer of responsibility arising in response to the necessity impelling the state to interpose its power for the purpose of apprehending persons charged with crime in order to maintain peace, order and security of property, the paramount object of political society; the attainment of which object makes it essential that peace officers should exercise their authority without the risk of defeat or delay in the execution of their purpose by the right of comon carriers of passengers to question or resist it.

As Justice Simmons says in *Brunswick Western R. R. Co.* v. *Ponder, supra*:

> "Ponder became the prisoner of the officers as soon as they laid hold on him, before he was removed from the train. He was taken out from under the protection of the conductor (that is the carrier) as against the officers of the law. He was then in the custody of the law."

Here is found the dividing line between the carrier's obligation to its passenger and its responsibility for acts of officers of the law. In the case at bar the police officers did not come upon the train on the invitation of the carrier. They went upon the train by virtue of the police power of the state conferred upon them by legislative enactment and as delegated officers of the people, for the purpose of discharging a duty which they owed to the state. They owed no recognition to the relation of carrier and passenger, and as they had the power to do, entirely terminated it. Hence the defendant had no right to insist upon a production of the authority by which they went upon the train to apprehend one of its passengers as a criminal, and had no right to examine into the assumed authority and determine whether or not they, in fact possessed it and were properly exercising it.

It is respectfully submitted that the Writ of Error should be dismissed.

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ROBERT A. KUTSCHBOCK,
Of Counsel.

MR. JUSTICE BRANDEIS delivered the opinion of the court.

These actions, which were tried together in the Supreme Court of New York and argued together here, arise out of the same facts and involve the same question of law. The plaintiffs, mother and daughter, both residents of Pennsylvania, occupied the same berth in a Pullman car while travelling from their home to New York City. At Syracuse, New York, police officers of that city entered the car, arrested the plaintiffs and, at the next station, removed them from the train. The officers in making the arrest acted without a warrant, upon telegraphic orders from the police department of Rochester, New York, in the belief that one of the plaintiffs was the woman implicated in atrocious murders which had recently been committed in Indiana. Investigation soon disclosed that this belief was unfounded; and they were promptly discharged from custody. These suits were then brought against the defendant to recover damages for the annoyance and indignities suffered. Plaintiffs contended that defendant had an affirmative duty to protect them as passengers from a wrongful arrest, and had failed to perform it. The trial court refused to permit plaintiffs to go to the jury and dismissed the complaints. Exceptions to these orders were overruled by the Appellate Division (147 App. Div. 557); the judgments entered for defendant were affirmed by the Court of Appeals (210 N. Y. 567-8); and the cases come here on writs of error.

Plaintiffs duly claimed that they had been denied rights secured by Article IV, § 2, subdivision 2, of the Federal Constitution.[1] The contention is that by reason of this

[1] Article IV, § 2, subdivision 2:

"A person charged in any State with treason, felony, or other crime, who shall flee from justice, and be found in another State, shall on de-

clause of the Constitution, they could not legally be arrested in New York for a crime committed in another State, except upon compliance with the provisions of § 5278 of the Revised Statutes [1] of the United States; that such being the law defendant's representatives were bound to know it and to protect them, its passengers, from arrest, unless all steps had been taken which would have justified their rendition upon application of another State. But these provisions of the Constitution and statutes have no application here. They deal merely with the conditions under which one State may demand rendition from another and the alleged fugitive may resist the latter's complying with the demand.[2] Here no demand had been made upon the executive of New York. Proceedings for

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mand of the executive authority of the State from which he fled, be delivered up, to be removed to the State having jurisdiction of the crime."

[1] Rev. Stats., § 5278 (Act of February 12, 1793, § 1, 1 Stat. 302):

"Whenever the executive authority of any State or Territory demands any person as a fugitive from justice, of the executive authority of any State or Territory to which such person has fled, and produces a copy of an indictment found or an affidavit made before a magistrate of any State or Territory, charging the person demanded with having committed treason, felony, or other crime, certified as authentic by the governor or chief magistrate of the State or Territory from whence the person so charged has fled, it shall be the duty of the executive authority of the State or Territory to which such person has fled to cause him to be arrested and secured, and to cause notice of the arrest to be given to the executive authority making such demand, or to the agent of such authority appointed to receive the fugitive, and to cause the fugitive to be delivered to such agent when he shall appear."

[2] The provisions are so narrow in scope, that if the removal is actually effected without the interposition of the State's executives—though it be by kidnapping and breach of the peace—the federal law affords no redress, and interposes no obstacle to the prosecution of the alleged fugitive by the State which has by wrongful act acquired jurisdiction over him. *Mahon* v. *Justice*, 127 U. S. 700; see also *Cook* v. *Hart*, 146 U. S. 183; *Pettibone* v. *Nichols*, 203 U. S. 192; *Ker* v. *Illinois*, 119 U. S. 436.

BURTON *v.* NEW YORK CENTRAL & HUDSON RIVER RAILROAD COMPANY.

HEEREN *v.* NEW YORK CENTRAL & HUDSON RIVER RAILROAD COMPANY.

ERROR TO THE SUPREME COURT OF THE STATE OF NEW YORK.

Nos. 71, 72. Argued November 21, 1917.—Decided December 10, 1917.

Article IV, § 2, subdivision 2, of the Constitution places no limitation upon the power of the States to arrest in advance of extradition proceedings; with Rev. Stats., § 5278, it deals merely with the conditions under which one State may demand rendition from another and under which the alleged fugitive may resist compliance by the State upon which the demand is made.

147 App. Div. 557; 210 N. Y. 567, affirmed.

THE cases are stated in the opinion.

Mr. William F. Connell for plaintiffs in error.

Mr. Robert A. Kutschbock, with whom *Mr. Charles C. Paulding* and *Mr. Alex. S. Lyman* were on the brief, for defendant in error.

rendition had not even been initiated. And there was no attempt at removal from the State. The arrest, so far as appears, was made by the New York police department of its own initiative.

These provisions of the Constitution and federal statutes do not deal with arrest in advance of a requisition. They do not limit the power of a State to arrest, within its borders, a citizen of another State for a crime committed elsewhere; nor do they prescribe the manner in which such arrest may be made. These are matters left wholly to the individual States. Whether the asylum State shall make an arrest in advance of requisition; and if so, whether it may be made without a warrant, are matters which each State decides for itself. Such has been the uniform practice, sanctioned by a long line of decisions and regulated by legislation in many of the States.[1] The alleged federal right which plaintiffs assert is not immunity from arrest without a warrant; it is immunity from arrest

[1] The decisions appear to be uniform that at common law arrest in advance of requisition is legal. *People* v. *Schenck*, 2 Johns. 478 (1807); *Simmons* v. *Commonwealth*, 5 Binney, 617 (1813); *People* v. *Goodhue*, 2 John Ch. 198 (1816); *Commonwealth* v. *Deacon*, 2 Wheeler Cr. Cases, 1, 17 (1823); *State* v. *Anderson*, 1 Hill, Law (S. C.), 327, 350–8 (1833); *State* v. *Loper*, 2 Ga. Dec. 33 (1842); *State* v. *Buzine*, 4 Harr. (Del.) 572 (1846); *In the Matter of Fetter*, 23 N. J. L. 311 (1852); *Morrell* v. *Quarles*, 35 Ala. 544 (1860); *Ex parte Romanes*, 1 Utah, 23 (1867); *Simmons* v. *Van Dyke*, 138 Ind. 380 (1894); *State* v. *Taylor*, 70 Vt. 1, 4 (1896). But some deny that it can be made without a warrant even in case of a felony. *Botts* v. *Williams*, 17 B. Monr. 687 (1856). The right of arrest and detention in advance of requisition is in many States regulated by statute. *Ex parte Rosenblat*, 51 Cal. 285; *Wells* v. *Johnston*, 52 La. Ann. 713; *Ex parte Lorraine*, 16 Nev. 63; *State* v. *Shelton*, 79 N. C. 605, 608; *Ex parte Ammons*, 34 Oh. St. 518; *State* v. *Whittle*, 59 S. C. 297. See Moore on Extraditions and Interstate Rendition, Appendix II. And under the statutes of some States arrest cannot be made until after proceedings charging the person have been had in the State where the crime is alleged to have been committed. *State* v. *Hufford*, 28 Iowa, 391, 395.

until after requisition granted. The Constitution grants no such immunity. To restrict the right of arrest as claimed would rob interstate rendition of much of its efficacy. As no federal right of plaintiffs was denied the judgments must be

Affirmed.